

**THE
BACKGROUND OF THE
UNIFORM CODE OF MILITARY
JUSTICE**

**PREPARED AT
THE JUDGE ADVOCATE GENERAL'S SCHOOL
U.S. ARMY**

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The Background of the Uniform Code of Military Justice

Introduction

The purpose of this paper is to provide a panoramic view of the development of military justice from its infancy in this country into the system which we know today. What follows is not designed as a detailed technical analysis. Rather, it is hoped the reader will see that the system of military justice first established in this country, which was modeled for the most part on the pre-Revolutionary War system of England based on the old Roman Code, has evolved from a system identified largely as the disciplinary tool of the commander into the elaborate judicial process that it has become today.

The development of the military justice system within the Army has been chosen because the Articles for the Government of the Navy, even until replaced by the Uniform Code of Military Justice, were largely (at least in theory and substance) the British Naval Articles of 1749. The disciplinary laws for the Coast Guard also developed only slightly from their beginning, principally for the reason that the most serious offenses of Coast Guard personnel during time of peace were tried by the Federal courts. It should be observed here that the same Articles of War applicable to the Army were made applicable to the Air Force when it was created in 1947.

The Articles of War of 1916, 1920, and 1948 were each implemented by an Executive Order of the President promulgating a Manual for Courts-Martial. These were, respectively, the Manuals for Courts-Martial of 1917, 1921, and 1949. In addition, the Manual for Courts-Martial, 1921, implementing the Articles of War of 1920, was rewritten and promulgated as the Manual for Courts-Martial, 1928. Numerous changes to this latter volume were made by other Executive Orders, and in 1943 a corrected edition was promulgated. The Uniform Code of Military Justice has been implemented by the President with the Manual for Courts-Martial, 1951. Each of these Manuals for Courts-Martial principally served as a vehicle for the President to prescribe procedure and modes of proof for courts-martial. In any event, all references in this paper, unless otherwise specifically mentioned, are to the statutory law, i.e., the Articles of War or the Uniform Code of Military Justice.

Although not within the scope of this paper, it should be mentioned that the development of military justice within the Army was paralleled by a strikingly similar development in England. For example, the British, also in 1951, superimposed a new civilian tribunal over their courts-martial system to review the findings of courts-martial. On the other hand, some changes have been made in England and the United States which are quite dissimilar. For example, the British have placed The Judge Advocate General and his reviewing functions completely outside the armed services; in the United States, the different systems of military justice in the services have been unified in the Uniform Code of Military Justice, while the British have attempted no such unification.

Early History

On 5 April 1775, the Provisional Congress of Massachusetts Bay adopted the first written code of military justice in the Colonies. This Code was known as the Massachusetts Articles. Later, the Colonies of Connecticut, Rhode Island, New Hampshire, Pennsylvania, and South Carolina adopted similar type articles to be observed by their respective colonial troops.

The Articles of War of 1775

The first military justice code applicable to all of the Colonies was adopted on 30 June 1775 by the Second Continental Congress in Philadelphia. This enactment was known as the American Articles of War of 1775. These articles were largely copied from the British Code of 1765 and the Massachusetts Articles. The former, according to John Adams, were a literal translation of the Articles of War of the Roman Empire. It is interesting to observe that George Washington served on the committee which prepared the Articles of War of 1775.

The Articles of War of 1776

Approximately one year later, on 14 June 1776, the Continental Congress appointed a committee, which included John Adams and Thomas Jefferson, to revise the Articles of War of 1775. New articles were prepared by this committee and were adopted on 20 September 1776 by Congress as "The Articles of War of 1776." This Code of 1776 was merely an enlargement, with modifications, of the Articles of War of 1775. It continued in force even after adoption of the Constitution, although there were a considerable number of amendments. The most important of these amendments was enacted on 31 May 1786 and remedied difficulties long present in the prior articles concerning the number of persons required as members of general courts-martial and the forerunner of what is today the special court-martial. Prior to the amendment of 1786, a general court-martial was required to have 13 members and a special court-martial 5 members. Due to the small number of Army personnel in those early days, it was impossible for many detachments to muster enough officers to constitute either a special or a general court-martial. The amendment of 1786 fixed the minimum number of members of a general court-martial at five and the minimum number of members of a special court-martial at three. These minimum figures have persisted even until today.

The Articles of War of 1806

After the adoption of the Constitution, in an enactment of 29 September 1789, the First Congress expressly recognized the then existing Articles of War of 1776, as amended, and provided that they would apply to the existing Army establishment. On 10 April 1806, however, the Congress enacted the "Articles of War of 1806," mainly for the reason that the change from a confederation to a constitutional type of government made desirable a rather complete revision of the Articles of

War. These articles remained in effect for some 70 years with but few changes until the advent of the Civil War. After the start of the Civil War, alterations and additions to the Articles of War of 1806 were numerous. The changes principally related to the trial and review of cases during the Civil War.

The Articles of War of 1874

Thereafter, on 22 June 1874, the Articles of War were completely revised and re-enacted as the Articles of War of 1874. This code, although amended a number of times, remained in effect until the enactment of the Articles of War of 1916. Because they established concepts which we find in the military justice system of today, some of the amendments to the Code of 1874 should be briefly observed. For example, it was during this period that the penalty of stoppage was first done away with and punishment left to the discretion of the court. Moreover, the punishments of flogging, branding, marking, and tattooing were first prohibited. Here we also find for the first time a separate statute of limitations on the prosecution of desertion in time of peace. Another milestone in the development of military law during this period was the authorization by Congress for the President to provide the maximum limits for punishments during time of peace.

The Articles of War of 1916

Shortly after the turn of the century, it became apparent that the Code of 1874, as amended, was very unscientific in its arrangement of articles and contained many provisions either wholly obsolete or not well suited to conditions existing in the service at that time. For example, Article 59 of the 1874 Code made it mandatory to turn an officer or soldier accused of an offense against the person or property of any citizen of the United States to the civil authorities, but only "upon application duly made by or in behalf of the party injured." This article thus ignored the more modern doctrine that all persons are entitled to equal protection of the laws and should be punished not at the insistence of an individual but at the insistence of officials representing the general public. In any event, on 29 August 1916, the Congress enacted the Articles of War of 1916. The Articles of War of 1916 were a complete revision of the old Code of 1874. Some of the more important changes effected are as follows:

1. The jurisdiction of the general court-martial was made concurrent with that of the military commission and other war tribunals for trial of offenses against the law of war. The jurisdiction of general courts-martial was also extended to include the capital offenses of murder and rape when committed in time of peace in places outside the United States.
2. Provision was made for the detail of one or more assistant trial judge advocates for each general court-martial with the power to act for the judge advocate, which resulted in increasing the capacity of these courts in the disposition of cases.

3. The provision of the Code of 1874 making regular officers incompetent to sit on courts-martial for the trial of officers and soldiers of other components was abolished and all distinction between components as far as eligibility to sit on courts-martial was removed.
4. The power to prescribe procedure and modes of proof before courts-martial and other military tribunals was expressly delegated to the President. This same power had, however, heretofore been exercised by the President to some extent on the theory that the same was included among his inherent constitutional powers.
5. The statute of limitations was completely revised and modernized.
6. Reviewing and confirming authorities were, for the first time, given the power to approve a lesser included offense.
7. The taking of depositions for use in trial by court-martial was modified substantially.
8. The required number of members voting for conviction of an offense carrying the death penalty was raised from a bare majority to a two-thirds majority.

The Articles of War of 1920

During the early part of 1919, several proposed revisions of the Articles of War of 1916 were introduced in both Houses of Congress. These bills were the results of several studies made of the entire courts-martial system with a view to its revision and improvement in the light and experience of World War I. One study was made by the War Department through a special board consisting of several general officers, a committee of civilian lawyers appointed by the American Bar Association, and representatives of the Office of The Judge Advocate General. This board not only made a study of the American Articles of War but of the systems of military justice existing in the British, French, and Belgian armies. All of these various studies were submitted to a subcommittee of the Senate Committee on Military Affairs. In addition, this subcommittee held extensive hearings on this subject. At the conclusion of these hearings, and upon invitation of the subcommittee, a bill providing for a revision of the Articles of War of 1916 was prepared by The Judge Advocate General and submitted to the subcommittee. This same bill, with a few minor changes, was enacted into law as Chapter II of the Army Reorganization Act on 4 June 1920 and is usually referred to as the Articles of War of 1920.

The salient features of the Articles of War of 1920 were as follows:

1. Enlisted men were placed on a par with officers with the right to prefer charges against anyone in the military service.

- * 2. The preliminary investigation of charges was made more strict than it had theretofore been. In particular, it was required that full opportunity be given accused at the preliminary investigation to cross-examine witnesses against him, if available.
- * 3. It became mandatory for the convening authority to refer charges to his Staff Judge Advocate for pretrial advice.
- 4. Unnecessary delay on the part of an officer investigating charges or carrying a case to final conclusion was made an offense punishable by trial by court-martial.
- 5. Resort to arrest instead of confinement pending trial in cases of enlisted men charged with minor offenses was prescribed rather than merely being authorized. This placed enlisted men upon the same footing as officers in respect to such offenses.
- * 6. Resort to the use of nonjudicial punishment rather than trial by court-martial was encouraged.
- 7. The appointment of defense counsel in the same manner as trial counsel was made mandatory. This placed the defense on the same footing as the prosecution but did not prevent the accused from being represented by his own counsel if he desired.
- 3. A law member was provided for every general court-martial.
- * 9. The referral of every record of trial by general court-martial by the convening authority to the Staff Judge Advocate for a post trial review prior to action thereon was made mandatory.
- 10. The President was authorized to establish the maximum limits of punishment during time of war as well as in time of peace.
- * 11. The reconsideration by a court of an acquittal or a finding of not guilty of any specification was prohibited.
- * 12. The adjudication by a court at proceedings in revision of a sentence more severe than that previously adjudged (unless a mandatory sentence was involved) was prohibited.
- 13. Provision for rehearings were made.
- 14. The number of votes required to impose certain sentences was required as follows:
 - a. Unanimous vote for a death sentence.

- b. A vote of three-fourths of the members for sentence to life or confinement for more than 10 years.
 - c. A vote of two-thirds of the members for all other sentences.
15. Provision was made for a system of appellate review for all general court-martial cases.
 16. Provision was made for greater flexibility in the suspension of sentences.
 17. A peremptory challenge for each side was first authorized (except that the law member could only be challenged for cause).
- * Those features marked with an asterisk were, for the most part, accomplished by general orders and changes to the Manual for Courts-Martial, 1917, in mid-year 1919.

Minor amendments were made to the Articles of War of 1920 in 1937, 1942, and 1947.

The Articles of War of 1948

As a result of World War II, when large numbers of civilians were drafted into the armed forces, especially into the Army, a loud public clamor was made for a revision of the systems of military justice which existed during World War II in the Army and in the Naval service. By and large, these objections were aimed at eliminating command influence and so-called "drumhead justice." As a result, there were a large number of investigations and reports by committees of civilians sponsored by both the Army and the Navy. Proposed articles of war and proposed articles for the government of the Navy were drafted. The Elston Bill, applicable only to the Army, was offered as an amendment to the National Defense Act of 1947 and was enacted by both Houses of Congress. The Articles of War of 1920, as amended by the Elston Act, were later made applicable to the Air Force. This bill substantially modified the existing Articles of War of 1920 and resulted in what is usually known as Articles of War of 1948. Some of the principal changes effected by the Elston Act are as follows:

1. For the first time since enactment of the original American Articles of War of 1775, warrant officers and enlisted men were authorized to serve as members of general and special courts-martial.
2. The former optional provision, under the Articles of War of 1920, that the law member be a judge advocate officer was made a mandatory jurisdictional requirement.

3. While not an absolute jurisdictional requirement, it was required that the trial judge advocate and defense counsel of each general court-martial be a member of The Judge Advocate General's Corps if available. In every case where the trial judge advocate was a member of The Judge Advocate General's Corps (or otherwise a lawyer) it was a jurisdictional requirement that the defense counsel also be so qualified.
4. The former practice of allowing an officer to act in conflicting capacities at different times in the same case as investigating officer, trial judge advocate, defense counsel, member of the court, or staff judge advocate was prohibited. An exception was made, however, whereby the accused could utilize the services of an officer as his defense counsel who had previously acted in some other capacity in the case if expressly requested.
5. For the first time a general court-martial was given plenary power to adjudge any legal punishment.
6. Officers were for the first time made amenable to trial by special courts-martial.
7. A new form of punishment, known as a bad conduct discharge, was authorized for the Army courts-martial system (the Navy had been authorized to impose a bad conduct discharge as punishment for some time). Special courts-martial were authorized to impose this type of punitive discharge. The imposition of the bad conduct discharge by a special court-martial was, however, subject to approval by the officer having general court-martial jurisdiction over the command and other appellate authorities.
8. It was provided that noncommissioned officers of the first two grades could not be tried by a summary court-martial unless they specifically consented to such trial in writing. Other noncommissioned officers could be tried by summary court-martial either if they did not object, or if a special court-martial convening authority directed such trial.
9. The practice during World War II of confining American soldiers with enemy prisoners was prohibited.
10. The right of the accused to have the same facilities as the trial judge advocate for securing the attendance of witnesses and documents was expressly stated.
11. The compulsory self-incrimination protections of the Articles of War of 1920 were considerably strengthened. The purpose in this action by the Congress was to prevent zealous investigators from obtaining confessions by use of the so-called "third degree."

12. The taking and use of depositions was liberalized.
13. The authority of the law member was greatly expanded. For example, except for challenges, motions for a finding of not guilty, and questions of an accused's sanity, the rulings of the law member on all interlocutory questions were final.
14. It was provided, for the first time, that the law member must, in open court, advise the other members of the court of the quantum and nature of evidence required to sustain findings of guilty.
15. The former provision that the President must present his regulations prescribing the procedure and modes of proof in courts-martial before the Congress annually was repealed.
16. Wartime absence without leave was added to the list of offenses for which there was no statute of limitations.
17. The Judge Advocate General was, for the first time, given complete control over the assignment of officers of The Judge Advocate General's Corps. Moreover, the direct communication between Staff Judge Advocates and convening authorities was insured by a specific provision to that effect.
18. The Judicial Council was first created.
19. The powers of confirmation granted to the President, the Secretary, The Judge Advocate General, The Judicial Council, and Boards of Review were greatly expanded to include powers to vacate, commute, or reduce to legal limits and to restore all rights, privileges, and property affected by any finding or sentence disapproved or vacated.
20. Due to certain technical amendments to Article of War 50, the former practice of dishonorably discharging an accused prior to review by a Board of Review was prohibited.
21. For the first time in the history of military law, appellate reviewing authorities (Boards of Review and The Judicial Council) were expressly given broad powers to weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact.
22. The power possessed by wartime commanding generals in the field to order a sentence of death executed was withdrawn. This was done, apparently, because Congress felt that only the President (or his delegate) should exercise this power.

23. Under new Article of War 52, rehearings were specifically authorized whenever a sentence was disapproved or vacated. This eliminated the result under the Articles of War of 1920 that a rehearing was not authorized where the sentence had previously been approved and ordered executed by the convening authorities.
24. A specific provision providing for the application of a new trial involving offenses committed during World War II was enacted. The purpose here was to provide a means of correcting possible injustices resulting during the hectic days of World War II.
25. The former mandatory punishment of an officer convicted of being drunk on duty by a dismissal was amended to provide that any person found drunk on duty could be punished at the discretion of the court-martial.
26. Convening authorities and commanding officers were expressly forbidden from censoring, reprimanding, or admonishing a court-martial or any of its members with respect to its findings or sentences, or the exercise of any judicial responsibility.
27. The article proscribing murder was amended to provide for two degrees of murder. Under former practice there was only one degree of murder with a mandatory punishment of life imprisonment or death. Under the 1948 Articles of War, death or life imprisonment was mandatory for premeditated murder, but punishment to a lesser degree was discretionary with the court in the case of unpremeditated murder.
28. The technical distinction between larceny and embezzlement was abolished.
29. Commanding officers' authority to impose nonjudicial punishment against officers was greatly expanded. For example, where formerly a forfeiture of pay of an officer could be imposed only in time of war or grave emergency, the 1948 Articles allowed imposition of this punishment at any time.

The Uniform Code of Military Justice

After the end of World War II, the movement to substantially revise the Articles of War maintained momentum even after the rather large scale amendments to the Articles of War of 1920 in 1948 by the Elston Act. Even before the Elston Act, many people were of the opinion that there should be one system of military justice for our armed forces rather than the separate systems of the Army and the Navy. With the creation of the Air Force in 1947, the specter of

another system of military justice added impetus to the movement toward one system of military justice. It should be noted that, although apparently unnoticed by many people, there was really a fourth system of military justice in existence--namely for the Coast Guard in time of peace. In any event, Secretary of Defense Forrestal appointed a committee to draft the Uniform Code of Military Justice designed to govern all branches of the service.

This committee, known as the Forrestal Committee, had as executive secretary Mr. Felix E. Larkin, then the Assistant General Counsel of the Department of Defense. Mr. Larkin headed a working staff of 15 lawyers composed of officers and representatives of the Army, Navy, Marine Corps, and Coast Guard, that also included five civilian lawyers. Unfortunately the service representatives were, for some reason greatly restrained by the civilian members of this committee. The resultant impact of this circumstance is not subject to definite assessment. The possibility remains, however, that some of our present day problems could have been avoided were this not the case. In any event, an intensive study was made of:

1. The law and practices of the several branches of the service;
2. The complaints made against the structure and operation of military tribunals;
3. The explanations and answers of representatives of the services to these complaints;
4. The various suggestions made by organizations and individuals for modification or reform and the arguments of the services as to the practicability of each; and
5. Some of the provisions of foreign military establishments and their application.

The Forrestal Committee endeavored to fashion a system of military justice that would be uniform in terms and in operation to all the services and, at the same time, would provide full protection of the rights of persons subject to the Code without undue interference with appropriate military discipline and the exercise of necessary military functions. To do this, it was felt that there must be, on the one hand, a complete repudiation of any system of military justice conceived of as only an instrumentality of command. On the other hand, the objective negated a system designed to be administered as the criminal law is administered in a civilian criminal court. Thus, the Uniform Code of Military Justice represents a compromise between the desire to eliminate command influence and fully protect accused persons and the desire to not unduly stifle the maintenance of discipline, as well as law and order, within the armed forces. Possibly the biggest factor in drafting the Uniform Code of Military Justice was the same factor which so strongly influenced the Elston Act in 1948--namely, the elimination of command influence.

The purpose of the Uniform Code of Military Justice was to establish one system for the administration of military justice uniformly applicable in all of its parts to the Army, the Navy, the Air Force, and the Coast Guard in time of war and peace. It has application to both the substantive and the procedural law governing military justice and its administration in all of the armed forces. It superseded the Articles of War applicable to the Army and the Air Force, the Articles for the Government of the Navy, and the Disciplinary Laws of the Coast Guard. It is the sole statutory basis today in all of our armed forces for:

1. The imposition of limited disciplinary penalties for minor offenses without judicial action;
2. The establishment of pretrial and trial procedure;
3. The creation and constitution of three classes of courts-martial; namely, general, special, and summary courts-martial;
4. The eligibility of members of each of the courts and the qualifications of its officers and counsel;
5. The review of findings and sentence and the creation and constitution of the reviewing tribunals; and
6. The listing and definition of offenses, redrafted and rephrased in modern legislative language.

Among the provisions included in the Uniform Code of Military Justice to obtain uniformity are the following:

1. Offenses made punishable by the code are identical for all the armed forces;
2. One system of courts with the same limits of jurisdiction of each court is established for all the armed forces;
3. The procedure for general courts-martial is identical as to institution of charges, pretrial investigation, action by the convening authority, review by the Board of Review, and review by the Court of Military Appeals in all the armed forces;
4. The rules of procedure at the trial, including modes of proof, are equally applicable to all the armed forces;
5. The Judge Advocates General are required to make uniform rules of procedure for Boards of Review;
6. The required qualifications for members of the court, law officer, and counsel are identical for all of the armed forces;

7. The Court of Military Appeals, which finally decides questions of law, is the court of last resort for each of the armed forces and also acts with The Judge Advocates General as an advisory body with a view to securing uniformity in policy and in sentences and in discovering and remedying defects in the system and its administration.

Among the provisions designed to eliminate command influence, and thus to insure a fair trial, are the following:

1. A pretrial investigation is provided, at which the accused is entitled to be present with counsel to cross-examine available witnesses against him and to present evidence in his own behalf.
2. A prohibition against referring any charge for trial which does not state an offense or is not shown to be supported by sufficient evidence.
3. A mandatory provision for a competent, legally trained counsel at the trial for both the prosecution and the defense.
4. A prohibition against compelling self-incrimination.
5. Provision for equal process to accused, as well as the prosecution, for obtaining witnesses and depositions.
6. A provision allowing only the accused to use depositions in a capital case.
7. A provision giving an accused enlisted man the privilege of having enlisted men as members of the court trying his case.
8. A provision whereby all voting on challenges, findings, and sentences is by secret ballot of the members of the court.
9. A provision requiring the law officer to instruct the court concerning the elements of the offense, presumption of innocence, and the burden of proof. These instructions are all to be matters of record and to be made either in open court or in writing.
10. A provision for an automatic review of the trial record for errors of law and of fact by a Board of Review with the right of the accused to be represented by legally competent counsel.
11. A prohibition against receiving pleas of guilty in capital cases

12. A provision for the review of the record for errors of law by the Court of Military Appeals. This review is automatic in cases where the sentence is death or involves a general or flag rank officer. A review may be requested by the accused in certain cases.

To assist in understanding and evaluating the impact of the Uniform Code of Military Justice, a section by section analysis thereof is set out in Annex A. This sectional analysis will be of assistance when considering specific articles of the Code. The more important changes made by the Uniform Code of Military Justice are noted in the sectional analysis. In addition, cross-reference to proposed changes (see Proposed Amendments to the Uniform Code of Military Justice, post) are noted where appropriate.

Amendments to the Uniform Code of Military Justice

Sections 11 and 12 of Article 2 were amended in 1956 so that civilians in Guam would not be subject to the Uniform Code.

The Codification of the Uniform Code of Military Justice

On 10 August 1956, Congress passed an act which revised, codified, and re-enacted Title 10, United States Code. Sections 801 through 940 thereof comprise the Uniform Code of Military Justice. Cross-reference from an article in the Uniform Code of Military Justice to the proper section in Title 10, United States Code may be accomplished by adding 800 to the Uniform Code of Military Justice article. For example: Article 63, Uniform Code of Military Justice, is 10 U.S.C. 863.

The Congressional intent in the codification was merely to restate existing law without substantive change. In restating the law, however, many changes in language were made. Therefore, the proper section of Title 10, United States Code, should always be consulted when the exact language of an article of the Uniform Code of Military Justice is desired.

Proposed Amendments to the Uniform Code of Military Justice

Two bills were introduced in the 86th Congress to amend the Uniform Code of Military Justice. These bills are usually referred to as the Omnibus Bill (H.R. 3387) and as the American Legion Bill (H.R. 3455).

The Omnibus Bill is sponsored by the Department of Defense and flows directly from the work of a group known as the Code Committee. The Code Committee consists of The Judge Advocates General of the Armed Forces, the General Counsel of the Treasury Department on behalf of the Coast Guard, and the three judges of the United States Court of Military Appeals. The Code Committee is required to meet annually; one of its duties being to recommend amendments to the Uniform Code of Military Justice. With a few minor exceptions,

the proposed amendments to the Uniform Code of Military Justice, contained in the Omnibus Bill, have been endorsed by the Code Committee every year since its first meeting. A copy of the letter of transmittal from the Department of Defense to the Speaker of the House is set out in Annex B. The inclosures to this letter contain the statutory language of the proposed amendments and a sectional analysis of each proposed change.

The American Legion Bill is, of course, sponsored by the American Legion. Some of the proposed changes in this bill are quite similar to those in the Omnibus Bill. Others, however, propose drastic changes not contemplated by the Code Committee. A copy of the letter from the Department of Defense to the Chairman of the House of Representatives Committee on Armed Services expressing opposition to the American Legion Bill is set out in Annex C.

A comparative table of the present articles of the Uniform Code of Military Justice, the proposed Omnibus amendments, and the proposed American Legion amendments is set out in Annex D.

An analysis of the present system of nonjudicial punishment under the Uniform Code of Military Justice is contained in Annex E.

An analysis of the present summary court-martial system under the Uniform Code of Military Justice is contained in Annex F.

An analysis of the present special court-martial system under the Uniform Code of Military Justice is contained in Annex G.

ANNEX A

SECTION BY SECTION ANALYSIS OF THE
UNIFORM CODE OF MILITARY JUSTICE

Article 1. Definitions.

This article contains the definitions of certain words and phrases used in the Uniform Code of Military Justice.

[The Omnibus Bill would add a definition of the words "convening authority." The American Legion Bill would amend section 10 and define "law officer" in such a manner as to require a law officer on the special court-martial.]

Article 2. Persons subject to the Code.

This article contains a list, generally, of all persons in all categories who are subject to court-martial jurisdiction under the UCMJ. Certain specific situations are, however, covered in Articles 3 and 4. Here, for the first time, members of the Coast Guard are made subject to a system of military justice as members of an armed force in both war and peace. Formerly, Coast Guard personnel when serving with the Navy were subject to the Articles for Government of the Navy, and when not serving with the Navy such personnel were subject to the Disciplinary Laws of the Coast Guard for minor offenses and to trial in Federal courts for more serious offenses.

Military jurisdiction over persons serving a sentence by a court-martial was somewhat restricted. Under the former Army provision, any person serving a court-martial sentence was subject to continuing military jurisdiction whether in the hands of the military or civilian authorities. Under the Uniform Code of Military Justice, jurisdiction over persons serving a sentence imposed by court-martial is limited to those persons in the custody of the armed forces. See in this connection Article 58, which authorizes the placing of persons convicted by court-martial in the custody of civil authorities to serve their sentence regardless of the nature of the offense or the length of the sentence. Although this effected a change in the law, the practical result is substantially the same under the Uniform Code of Military Justice as under the former Articles of War because AR 633-5 restricts the categories of persons who may be placed in the custody of civil authorities to complete their sentence by court-martial.

Section 11 of Article 2 purports to make "all persons serving with, employed by, or accompanying the armed forces" without the continental United States and without certain territories subject to the UCMJ and trial by courts-martial. The United States Supreme Court has held, however, that dependents accompanying our armed forces overseas during time of peace are not subject to trial by court-martial on a capital charge. Thus, subsection 11 is, with respect to such dependents, an ineffective attempt by Congress to confer jurisdiction for trial by court-martial on a capital charge. Because of the complexity of the problems involved, one cannot anticipate with certainty whether

Article 2(11) is effective to confer court-martial jurisdiction over civilian dependents overseas in time of peace for non-capital offenses.

Article 3. Jurisdiction to try certain personnel.

Section (a) represents an attempt by Congress to provide court-martial jurisdiction over certain discharged members even after their discharge. This provision has been held unconstitutional by the United States Supreme Court in the case of Toth v. United States.

Section (b) provides for continuing court-martial jurisdiction over persons who fraudulently obtain their discharge from the service. It conforms to prior Army practice.

Section (c) is designed to assure that a deserter who enlists and is discharged from a second term of service is still amenable to trial by court-martial for the desertion in his first term of service. This section was prompted by a Federal case, the effect of which was to bar such prosecution.

Article 4. Dismissed officer's right to trial by court-martial.

This article provides that any officer dismissed by order of the President, by applying for trial by court-martial stating under oath that he has been wrongfully dismissed, must be tried by a general court-martial convened by the President as soon as practicable. If the President does not convene such a general court-martial, or if such court-martial is convened but does not adjudge dismissal or death (as approved by appellate authorities), the Secretary shall substitute an administrative discharge for the dismissal. This effects a change from the prior statute applicable to the Army and the Air Force. Under the prior statute, the President's order of dismissal was considered void if a general court-martial was not convened upon application, or if the court was convened but did not award dismissal or death as punishment. This change was made to avoid the rather substantial doubt of the constitutionality of the former provision.

Article 5. Territorial applicability of the Code.

This article simply provides that the Uniform Code of Military Justice is applicable in all places without limitation.

Article 6. Judge advocates and legal officers.

Sections (a) and (b) correspond generally with prior Army practice. Section (a), however, differs somewhat from the language of the prior Army provision in order to make clear that The Judge Advocate General does not actually issue orders assigning judge advocates but that appropriate personnel divisions (i.e., The Adjutant General) will issue such orders in accordance with the recommendations of The Judge Advocate General. Section (a) also places all judge advocates under the control of The Judge Advocate General.

[The American Legion Bill in amending section (a) would require that all judge advocates, except when serving on a board of review, would be rated for efficiency by The Judge Advocate General.]

Section (b) not only authorizes direct communication within military justice channels but also enhances the position of Staff Judge Advocates by requiring direct communication between such officers and their commanding officers.

Section (c) is in accord with prior Army practice and is designed to secure review of a case by an impartial Staff Judge Advocate.

Article 7. Apprehension.

This article should be read in conjunction with Articles 8 through 14, which provide for the apprehension and restraint of a person subject to the Code.

Sections (a) and (b) are new. Section (a) defines apprehension, and section (b) sets forth the conditions under which one may apprehend.

Section (c) provides, simply, that certain persons have authority to quell all quarrels, frays, and disorders among persons subject to the Code and to apprehend them.

Article 8. Apprehension of deserters.

This article provides that certain civil authorities may apprehend deserters and return them to military control. It is an expansion of the prior Army provision to cover deserters from all of the armed forces.

Article 9. Imposition of restraint.

This article, generally speaking, effects little change from the prior Army provision. However, section (a) clarifies the differences of interpretation of the terms "arrest" and "confinement" under prior practices of the Army and the Navy. Section (c) effected a change for the Army to the extent that civilians are now assimilated to officers rather than to enlisted persons.

This article, in addition to defining the terms "arrest" and "confinement," sets out, in various sections, the conditions which must be met before persons may be placed in either status of restraint.

Article 10. Restraint of persons charged with offenses.

This article provides the basis for, and degree of, restraint of persons subject to the Code. It substantially conforms to the prior Army provision. The provision providing for notification of the accused is new.

Article 11. Reports and receiving of prisoners.

Section (a) provides that provost marshals (and their counterparts in other services) must receive and keep any person subject to the Code when an officer presents the provost marshal with proper commitment papers.

Section (b) provides for a report to the commanding officer of the prisoner within 24 hours after commitment.

There is no substantial change in this article from prior Army provisions although some of the language was changed to conform with Navy terminology.

Article 12. Confinement with enemy prisoners prohibited.

This article makes no substantial change from the prior Army provision. The language has been changed somewhat, however, to avoid the possible interpretation of Article of War 16, which would prohibit the confinement of members of the Army within the same building with prisoners of war. The present article is intended to permit confinement of members of the armed forces with enemy prisoners within the same confinement facility but requires segregation within the confinement facility.

[The Omnibus Bill would amend this article so as to clearly allow the confinement of members of the armed forces in United States confinement facilities with members of the armed forces of friendly nations.]

Article 13. Punishment prohibited before trial.

This article conforms substantially to the prior Army provision. The language has been altered from its predecessor, Article of War 16, principally to clarify the relation of this article to the effective date of sentences. Article of War 16 had been interpreted to prohibit the enforcement of any sentence until after final approval even though the accused was in confinement after the sentence was adjudged. Article 13, therefore, while prohibiting punishment of prisoners before trial generally, does now allow the forfeiture of a prisoner's pay between the date the sentence is adjudged and the date the sentence is finally approved in certain circumstances.

The latter clause of Article 13 makes it clear that a person being held for trial may be subjected to minor punishment for infractions of discipline during pretrial confinement.

Article 14. Delivery of offenders to civil authorities.

Section (a) provides that the Secretary of a Department may deliver a member accused of an offense against civil authorities over to the civil authorities for trial. This section conforms to prior Navy practice and represents a marked change from the prior Army provision.

Under the prior Army provision (Article of War 74), a commanding officer was required to deliver a member of his command to the civil authorities upon request, except during time of war. The Navy practice rather than the Army practice was adopted in the Uniform Code of Military Justice because Article of War 74 was enacted at a time when the Army did not have authority to try its personnel for civil offenses in time of peace.

[The American Legion Bill will amend section (a) so as to prohibit the trial by court-martial of members of the armed forces for any civil type offense except in time of war if the civil authorities having jurisdiction made a request for delivery prior to arraignment of the accused.]

Section (b) provides that delivery of a member of the armed forces to civil authorities pursuant to section (a) will interrupt the execution of any court-martial sentence and that the civil authorities must, on request, return the member to military control. Section (b) did not effect a change for the Army.

Article 15. Commanding officer's nonjudicial punishment.

Article 15 is the statutory basis for all nonjudicial punishment. This article was drastically rewritten as it passed through the Congress. The House cut down the punishments authorized by the Defense Department's draft, and the Senate further cut down the House authorizations. Article 15 as enacted reflects the Senate draft, the result of which is, in many cases, lessening of the punishments authorized under the prior Army provision, namely, Article of War 104.

[The Omnibus Bill would amend section (a) to allow a general court-martial authority to impose a forfeiture of one-half of an officer's pay a month for a period of two months. It would also allow a commanding officer in the grade of major or above to impose upon enlisted personnel a forfeiture of one-half of one month's pay and confinement for seven consecutive days.]

Section (b) recognizes, and allows for, the differences in the prior practice of the Army and Navy concerning nonjudicial punishment. The Army, under Article of War 104, allowed an election between nonjudicial punishment and trial by court-martial. The Navy, under the Articles for the Government of the Navy, allowed no election on the theory that a commanding officer's punishment relates entirely to discipline and not to a crime. Furthermore, in many cases in the Navy, if an election were allowed, it would result in granting a subordinate officer to pass on the judgment of his superior. Section (b), therefore, grants to the Secretary of each Department the right to place limitations on the kind and amount of punishment authorized, the persons who may exercise authority, and the applicability of Article 15 to persons who demand trial by court-martial. The practical result here is that the Army and the Navy are allowed to follow their different prior practices.

Section (c) permits "officers in charge" to impose punishment for minor offenses as authorized by regulations issued by the Secretaries of the Departments. This section was so worded because of the differences in the status and authority of "officers in charge" in the various services. For example, in the Navy an "officer in charge" is always a commissioned officer. Whereas in the Coast Guard an "officer in charge" is construed to include noncommissioned officers as well as commissioned officers.

Section (d) provides for the appeal by a person punished under the provisions of Article 15. This section incorporates and strengthens the prior Army provision.

Section (e) conforms to the prior Army provision and provides that the imposition of punishment under Article 15 is not a bar to trial by court-martial for a serious offense but is a bar to trial for a minor offense.

Article 16. Courts-martial classified.

This article clarifies the types of courts-martial and their composition. There is no change from the prior Army provisions except that the law member is redesignated the law officer, and the latter is no longer a member of the court.

[The Omnibus Bill would amend section 2 of Article 16 to provide for a single officer special court-martial consisting of a law officer. Both the accused and convening authority would have to consent to the use of such a one officer special court-martial. The law officer who would sit as a single officer special court-martial would have to be certified as qualified for such duty by The Judge Advocate General.

The American Legion Bill would amend Article 16 to provide that a special court-martial would have a law officer in addition to the members presently required. This would be consistent with the American Legion amendment to section 10 of Article 1.]

Article 17. Jurisdiction of courts-martial in general.

Section (a) provides that each armed force has court-martial jurisdiction over all persons subject to the Code, thus providing for reciprocal jurisdiction among the armed forces. The exercise of jurisdiction by one armed force over personnel of another armed force, however, must be in accordance with regulations prescribed by the President.

Section (b) provides, where reciprocal jurisdiction has been exercised, that the appellate review required by the Code shall be carried out by the armed force of which the accused is a member.

The provisions of this article are quite new. Under the former Articles of War, the Army was able to exercise jurisdiction over Marine Corps personnel and certain Naval personnel in some special situations. The other services, however, had no jurisdiction over Army personnel.

By Executive Order, the President delegated to the Secretary of Defense the authority to empower commanders of joint commands or task forces to convene general courts-martial for the trial of any member of the armed forces. The Secretary of Defense has in fact, in a few cases, empowered certain joint commanders to exercise reciprocal jurisdiction.

Article 18. Jurisdiction of general courts-martial.

This article provides that general courts-martial have jurisdiction to try any person subject to the Code for any offense and adjudge any legal punishment under such regulations that the President may prescribe. It also provides that general courts-martial have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and adjudge any punishment not forbidden by the law of war.

Article 19. Jurisdiction of special courts-martial.

This article provides for the jurisdiction of special courts-martial and sets the limitations on various punishments which may be imposed. This article is derived from Article of War 13 and effected no change for the Army.

[The American Legion Bill would amend Article 19 so that special courts-martial would no longer be empowered to impose a bad conduct discharge. This accords with present Army policy as promulgated in AR 22-145 which regulation as a practical matter has precluded special courts-martial within the Army from adjudging a bad conduct discharge for sometime.]

Article 20. Jurisdiction of summary courts-martial.

This article provides for the jurisdiction of summary courts-martial and sets forth the limits of punishment which may be imposed.

The article also provides for the right to refuse trial by summary court-martial except in those cases where the accused has been permitted to refuse punishment under Article 15.

The absolute right to refuse trial by summary court-martial referred to in the preceding subparagraph represents a change from the prior Army provision providing for summary courts-martial. See principal change No. 8 to the Articles of War as made by the Elston Act, supra, page 7.

Article 21. Jurisdiction of courts-martial not exclusive.

This article was inserted to insure that the enactment of the Uniform Code of Military Justice would not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses who, either by statute or by the law of war, may be tried by military commission, provost courts, or other military tribunals.

Article 22. Who may convene general courts-martial.

Section (a) lists the persons who may convene general courts-martial as defined by Article 16. This section was derived from Article of War 8 which was altered only to the extent of including terminology applicable to Air Force and Navy commanders who occupy positions on a par with Army commanders.

Section (b) is also derived from Article of War 8 and provides that the accuser in any case may not convene a court-martial for the trial of that case. An accuser is defined by section 11 of Article 1.

[The Omnibus Bill would amend section (b) to provide that if the convening authority (except the President) is an accuser, the court must be convened by competent authority not subordinate in command or grade to the accuser.]

Article 23. Who may convene special courts-martial.

This article is similar to Article 22 except that it pertains to the special courts-martial.

[The Omnibus Bill would amend section (b) of Article 23 in the same fashion that it would amend section (b) of Article 22.]

Article 24. Who may convene summary courts-martial.

This article is also similar to Article 22 except that it pertains to summary courts-martial.

[The American Legion Bill would amend section (b) of Article 24 to prohibit an officer from acting as a summary court when such officer is the only commissioned officer present with a command or detachment.]

Article 25. Who may serve on courts-martial.

Sections (a), (b), and (c) make personnel of any armed force competent to sit as members of courts-martial without regard to whether they are members of the same armed force as the convening authority or the accused. This, of course, effects a change from the former Army provision (Article of War 4) to the effect that only Army personnel could sit on trials by courts-martial of Army personnel.

Article of War 4 did, however, as an exception to the foregoing statement, provide that Marine Corps personnel could sit on the courts-martial of the trial of Army members when such Marine Corps personnel were detached for service with the Army by order of the President. Thus, to a limited extent, Article of War 4 was a forerunner of Article 25. These sections, however, must be read in conjunction with Article 17.

[The Omnibus Bill would amend section (a) to provide that an officer to be eligible for appointment as a single officer special court-martial must have the same qualifications as a law officer and must be certified as qualified for duty as a single officer special court-martial by The Judge Advocate General. This proposed amendment must be read in conjunction with the proposed amendment in the Omnibus Bill to section 2 of Article 16.]

Section (c), in addition, limits the competency of enlisted persons to sit as members of courts-martial to cases where they are not members of the same unit as the accused. This proviso of section (c) was derived from Article of War 16 and effected no change for the Army.

Subsection (d)(1) provides that no person shall be tried by a court-martial, any member of which is junior to him in rank or grade. This provision also was derived from Article of War 16 and effected no change in substance for the Army.

Subsection (d)(2) provides some general guide lines for convening authorities in appointing members of courts-martial. No real change of substance was effected for the Army. The last sentence of this subsection provides for the statutory disqualification of members of courts-martial and represents some change for the Army. For example, a person who has acted as investigating officer or as counsel in the same case is, under the Uniform Code of Military Justice, disqualified for membership; whereas, under the Manual for Courts-Martial, United States, 1951, these two categories of persons would only have been subject to challenge for cause.

[The American Legion Bill would amend subsection (d)(2) to clearly provide that an accuser, a witness for the prosecution, or one who has acted as investigating officer or counsel in the same case would be ineligible to serve as a member of a court-martial.]

[The American Legion Bill would amend Article 25 by adding section (e) thereto providing that a summary court-martial must have the same qualifications as the law officer of a general court-martial.]

Article 26. Law officer of a general court-martial.

Section (a) provides for the qualifications and disqualifications of law officers.

Although this entire article was derived from Article of War 8, the real change is reflected in section (b), which provides that the law officer is not a member of the court, nor may he consult with members of the court except in the presence of accused other than on the form of the findings.

[The American Legion Bill would amend section (b) and prohibit the law officer from assisting the court in placing the findings in proper form.]

[The American Legion Bill would further amend Article 26 by adding section (c) thereto providing that the law officer would preside over all proceedings of general and special courts-martial except when the court was closed for deliberation or voting.]

Article 27. Appointment of trial counsel and defense counsel.

Section (a) provides generally for the appointment of trial counsel and defense counsel and sets forth some specific disqualifications.

[The American Legion Bill would amend section (a) and require the detail of a defense counsel before a summary court-martial upon request of the accused.]

Section (b) sets forth the specific qualifications for those persons appointed either as trial counsel or defense counsel. This section effected a moderate change for the Army in that under the Uniform Code of Military Justice counsel for general courts-martial must in all cases be lawyers; under the Articles of War, non-lawyers could be appointed in certain cases. The requirement for certification of trial and defense counsel of general courts-martial set out in subsection (b)(2) is new.

Section (c) provides for the qualifications of counsel before special courts-martial and is derived from, and is substantially the same as, Article of War 11.

Article 28. Appointment of reporters and interpreters.

This article provides authority for the appointment of reporters and interpreters pursuant to regulations issued by the Secretary of the Department. This article is substantially the same as Article of War 115, the prior Army provision from which it was derived. The power to appoint reporters and interpreters, however, was shifted from the president of the court under Article of War 115, to the convening authority under Article 28.

Article 29. Absent and additional members.

Section (a) limits the reason for excusing members of courts-martial after arraignment and is new.

Sections (b) and (c) specify the procedure for replacing absent members of general and special courts-martial.

[The American Legion Bill would amend section (c) by requiring the procedure presently required when a new member is placed on a special court-martial to be conducted before the law officer thereof and the members. This change is consistent with the concepts otherwise proposed in the American Legion Bill to provide a law officer on special courts-martial.]

Article 30. Charges and specifications.

This article describes the procedure to be followed in the preferring of charges.

Section (a) is substantially the same as Article of War 46, from which it was derived.

Section (b) is new and provides for the immediate disposition of charges; and for informing the accused, as soon as practicable, when charges are preferred. See Article 98, which makes it an offense to unnecessarily delay the disposition of a case. See also Article 10, which provides that a person placed in restraint be promptly informed of the specific wrong of which he is accused.

Article 31. Compulsory self-incrimination prohibited.

This article was derived from Article of War 24 and prohibits generally any compulsory self-incrimination.

Section (a) provides that no person subject to the Code shall compel any other person to incriminate himself and, thereby, extends the privilege against self-incrimination to all persons under all circumstances. Under the predecessor provision, Article of War 24, only persons who were witnesses were specifically granted this privilege.

Section (b) provides that no person subject to the Code shall interrogate or request any statement of an accused or a person suspected of an offense without informing him of his rights. This advice must include a statement of the nature of the accusation, that no statement need be made, and that if any statement is made, it may be used as evidence against him. This section broadens the comparable provision in Article of War 24 to protect not only persons who are accused of an offense, but also those who are suspected of one.

Section (c) provides that no person subject to the Code shall compel any person to make a statement or produce evidence before any military tribunal if the same is not material and may tend to degrade him. This section is similar to Article of War 24 in that the privilege against self-degradation is granted to witnesses before a military tribunal and also to persons who make depositions for use before a military tribunal. It is made clear, however, that this privilege cannot be invoked where the evidence is material to the issue.

Section (d) provides that no statement obtained in violation of Article 31 or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against such person in a trial by court-martial. This section effected a change from the comparable provision in Article of War 24 in that under section (d) statements or evidence obtained in violation of sections (a), (b), and (c) are admissible only against the person from whom they were obtained. This conforms with the theory that the privilege against self-incrimination and self-degradation is a personal one.

Article 32. Investigation.

This article provides generally for a pretrial investigation in all general court-martial cases. Various sections provide for the subject matter of the investigation, the procedure, and the right to counsel. This article was derived from Article of War 46.

Section (a) effects no change in substance from Article of War 46.

The last clause of section (b) providing that a copy of the statements be given the accused is new. Otherwise, this section conforms to the comparable provision of Article of War 46.

Section (c) is new and is designed to eliminate dual investigations. Thus, where there has been a previous investigation, an Article 32 investigation is not required unless demanded by the accused.

Section (d) provides that, though the requirements of Article 32 are binding on all persons administering this Code, failure to follow the provisions of Article 32 shall not constitute jurisdictional error. This section was added by Congress to prevent Article 32 from being construed as jurisdictional in habeas corpus proceedings. It should be observed, however, that an officer who has the responsibility to order a pretrial investigation and who intentionally fails to have such an investigation conducted, and such failure substantially prejudices the rights of an accused would be guilty of an offense under Article 98.

Article 33. Forwarding of charges.

This article provides for a report in writing if charges and the Article 32 investigation are not forwarded to the officer exercising general court-martial authority within eight days after an accused is ordered into arrest or confinement for trial by general court-martial. This article is derived from Article of War 46 and is intended to insure

the expeditious processing of charges and specifications in general court-martial trials. Other than the requirement that the report be in writing, no change was made from the comparable provision in Article of War 46.

Article 34. Advice of staff judge advocate and reference for trial.

This article is the statutory requirement that a convening authority must obtain pretrial advice from his Staff Judge Advocate in general court-martial cases.

Section (a) is derived from Article of War 47, and no substantial change was effected. It does now make it clear that the finding, that the charge alleges an offense and is warranted by the evidence, is to be made by the convening authority and not the Staff Judge Advocate. This clarifies this ambiguity in Article of War 47.

Section (b) allows formal corrections in the charges and specifications as well as changes to make the charges and specifications conform to the evidence contained in the investigating officer's report. This provision was derived from the Manual for Courts-Martial, United States, 1949.

Article 35. Service of charges.

This article provides for service of a copy of the charges on the accused and also provides that in time of peace no person shall be tried over his objection by general court-martial within five days subsequent to service of charges or by special court-martial within a period of three days subsequent to the service of charges. This article was derived from Article of War 46. The only principal change in substance therefrom is the insertion of a three-day time limit on trials by special court-martial. Article of War 46 only contained the five-day time limit concerning general courts-martial.

Article 36. President may prescribe rules.

This article provides the present statutory basis for the President to prescribe rules of procedure including modes of proof for all the military tribunals. This article is derived from Article of War 38 and was broadened to apply to all military tribunals of all of the services. Section (b) was added by the House Committee to insure the uniformity of such rules in all the services.

[The American Legion Bill would revise Article 36 completely. It would require that the rules of procedure in courts-martial be prescribed by the United States Court of Military Appeals and that the rules of evidence applicable in the United States District Court for the District of Columbia be applicable to courts-martial (with minor exceptions otherwise made in the amendment).]

Article 37. Unlawfully influencing action of court.

This article prohibits convening authorities and commanding officers from unlawfully influencing the law officer, counsel, and members of courts-martial. It also proscribes unlawfully influencing any convening or reviewing authority with respect to their judicial acts. This article incorporates the provisions of Article of War 88. In addition, however, it prohibits the unlawful influencing of the law officer or counsel.

This article, as was its predecessor, is not intended to preclude the reviewing authority from making fair comments on errors of the court in an opinion which is made in the course of a review, or from returning a record for revision, or from taking appropriate action when a member of the court has so misbehaved so as to abandon his judicial responsibility or duties. Violations of this article, however, constitute an offense under Article 98.

[The Omnibus Bill would amend Article 37 to provide clearly that no commanding officer or any officer on the staff of any commanding officer should unlawfully influence law officers, counsel, and members of courts.]

[The American Legion Bill would supplement Article 37 by adding section 1509 to title 18, United States Code, providing that whoever censures, reprimands, abolishes or endeavors to cohere, improperly influence, directly or indirectly, any court-martial or other military tribunal shall be fined not more than \$5,000.00 or imprisoned for not more than five years or both.]

Article 38. Duties of trial counsel and defense counsel.

This article provides generally for the duties of trial and defense counsels. Sections (a) and (b) were derived from comparable provisions in Articles of War 11 and 17.

[The American Legion Bill would amend section (a) to provide that the trial counsel would prepare the record of trial of special and general courts-martial under the direction of the law officer.]

Section (c) is new and is designed to encourage defense counsels to submit briefs in appropriate cases.

Sections (d) and (e) are derived from Article of War 116. However, these two sections impose stricter requirements governing the circumstances under which assistant counsel may act independently of the trial counsel or defense counsel in order to maintain the quantity of counsel and to protect the accused.

Article 39. Sessions.

This article provides that only members of general and special courts-martial shall deliberate and vote on the findings and sentence. By its terms, however, the law officer is allowed to assist the court

in placing the findings in proper form. It also provides for the recording of all proceedings. It expands the provision of Article of War 30 and provides for the presence of all parties and the law officer in general courts-martial except when the members of the court retire to vote or deliberate or when the law officer assists the court with the findings. It further prohibits the court from consulting either with trial counsel, defense counsel, or the law officer in the absence of the others.

[The American Legion Bill would amend Article 39 to prohibit the law officer of a general court-martial from assisting the court in placing its findings in proper form. This proposed amendment should be read in conjunction with the proposed amendment of the American Legion Bill to Article 26.]

Article 40. Continuances.

This article provides simply that a court-martial may grant a continuance for reasonable cause and follows the comparable former Army and Navy provisions.

[The American Legion Bill would amend Article 40 to clearly provide that in general and special courts-martial it is the law officer who may grant continuances.]

Article 41. Challenges.

This article provides for challenges for cause and peremptory challenges.

Section (a) provides for challenges for cause and is substantially the same as Article of War 18, from which it was derived.

[The American Legion Bill would amend section (a) to provide that the law officer would determine the validity of challenges for cause rather than the court as is now provided by section (a).]

Section (b) authorizes one peremptory challenge by the trial counsel and one peremptory challenge for each accused. This effected a change from a comparable provision in Article of War 18 in that formerly only one peremptory challenge was allowed to the defense regardless of the number of defendants. Under prior Navy law, no peremptory challenges were allowed.

[The Omnibus Bill would amend section (b) to provide that a single officer special court-martial would only be subject to challenge for cause and could not be peremptorily challenged.]

Article 42. Oaths.

This article requires that all officials and clerical assistants of general and special courts-martial be sworn. The oaths are not described in the Code as it was felt by the Congress that the language of the oaths was suitable matter to be covered by regulations. The Manual for Courts-Martial, United States, 1951, provides for these various oaths substantially in the same form as used by the Army under prior manuals.

Article 43. Statute of limitations.

This article provides for a statute of limitations for all of the various offenses punishable under the Code.

Generally speaking, this article provides a statute of limitations of three years for the more serious offenses, a statute of limitations of two years for less serious offenses, and no statute of limitations for the offenses of desertion or AWOL in time of war, aiding the enemy, mutiny, and murder.

In general, Article 43 is comparable to the former Army provisions except that (1) aiding the enemy was added to the list of offenses which may be tried and punished at any time; (2) section (c) of Article 43 added a statutory time limitation on nonjudicial punishment; and (3) section (b) of Article 43, adapted from Article of War 39, changed the time when the period of limitations would stop running from the time of arraignment to the time sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction over the command.

Section (d) provides for certain circumstances under which the statute of limitations will not run.

Section (e) provides for a temporary suspension of the statute of limitations for any offense, the trial of which would be detrimental to the prosecution of a war or inimical to the national security.

Section (f) incorporates a similar provision in 18 U.S.C. 3287 which otherwise might not be applicable to court-martial cases. This section generally provides for a suspension of the running of the statute of limitations in procurement matters generally during time of war and for three years after the termination of hostilities.

Article 44. Former jeopardy.

Section (a) provides that no person shall, without his consent, be tried for a second time for the same offenses and preserves for the members of the armed forces comparable protections afforded in the Fifth Amendment to the Constitution. A similar provision has been in the Articles of War since 1806.

Section (b) sets forth the condition which must be met before a trial by court-martial becomes a trial.

Section (c) provides that any trial which is terminated after the introduction of evidence by the convening authority or the prosecution for failure of evidence or witnesses without any fault of the accused shall be a trial in the sense of this article.

Article 45. Pleas of the accused.

Section (a) provides for entering a plea of not guilty for the accused in the event he makes any irregular pleading or in any manner improvidently pleads guilty, or if he fails or refuses to plead at all. This section follows the comparable provision in its predecessor, Article of War 21.

Section (b) is new and provides that the accused may not plead guilty where the death penalty may be adjudged. This rule, while not a provision of law under the former Articles of War, was followed by the Army as a matter of policy. This same rule was also followed by the Navy as to certain capital offenses.

Article 46. Opportunity to obtain witnesses and other evidence.

This article provides equal opportunity for the prosecution and the defense to obtain witnesses and other evidence. It was derived principally from Article of War 22. The Congress purposely left the mechanical details of the issuance of process to regulations.

Article 47. Refusal to appear or testify.

This article provides the authority, and the penalty for the violation of such authority, to compel persons not subject to the Code to testify in court-martial cases when duly subpoenaed. This article was derived principally from Article of War 23 (although the Navy had a similar provision). A violation of this article is punishable only in a United States district court or in a court of original criminal jurisdiction in any of the Territorial possessions of the United States.

Article 48. Contempts.

This article was derived from Article of War 32 and perpetrated the authority of courts-martial and other military tribunals to summarily punish for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

Article 49. Depositions.

This article provides for the taking and use of depositions in trials by courts-martial. No substantial change was effected from the comparable prior Army provision.

Article 50. Admissibility of records of courts of inquiry.

This article specifies the conditions under which the records of a court of inquiry may be used in a subsequent court-martial case. This article is derived from Article of War 27 and is also similar to prior Navy practice.

Article 51. Voting and rulings.

Section (a) prescribes the manner in which members of a court-martial shall vote.

Section (b) provides authority for the law officer of the general court-martial and the president of a special court-martial to make final rulings upon all interlocutory questions other than challenge for cause, a motion for a finding of not guilty, or a question of the accused's sanity.

√The Omnibus Bill would amend section (b) to allow the law officer to rule finally on a motion for a finding of not guilty. It would further provide that the law officer could change any of his rulings made during the trial except where a motion for a finding of not guilty was granted.√

√The American Legion Bill would also amend section (b) and to provide that the law officer's ruling on a motion for a finding of not guilty would be final.√

Section (c) prescribes that the law officer of a general court-martial and the president of a special court-martial must instruct the court as to the elements of the offenses, presumption of innocence, reasonable doubt, reasonable doubt as to the degree of guilt, and the burden of proof before the court closes to vote on the findings. This section was intended to set out the minimum requirements as to the scope of the instructions.

√The American Legion Bill would amend section (c) to provide that the law officer rather than the president of a special court-martial would instruct the court on the elements of the offense and other required instructions. This change is consistent with the concept of having a law officer on a special court-martial as otherwise provided by proposed amendments in the American Legion Bill.√

The provisions of this article are, in general, derived from Article of War 31.

√The Omnibus Bill would amend Article 51 by adding section (d), providing that sections (a), (b) and (c) would not apply to a single officer special court-martial and that the single officer special court-martial would determine all questions of law and fact and adjudge the sentence.√

Article 52. Number of votes required.

This article prescribes the number of votes required in various circumstances in trials by courts-martial and is derived from Article of War 43.

Subsection (b)(3) clarifies the comparable provision in Article of War 13 as to the number of votes required for a sentence which does not extend to death or imprisonment in excess of 10 years.

Section (c) clarifies the comparable provision in Article of War 43 for the method of determining issues to be decided by a majority vote when the vote is tied.

√The American Legion Bill would delete the language in section (c) related to a tie vote on a motion for a finding of not guilty. This amendment is acquired because of the amendment proposed by the American Legion Bill to section (b) of Article 51, which would allow the law officer to rule finally on a motion for a finding of not guilty.√

Article 53. Court to announce action.

This article is largely new and provides that every court-martial must announce its findings and sentence to the parties as soon as determined. Article of War 29 required that an acquittal be announced but left the announcement of a sentence of findings of guilty to the discretion of the court. Congress felt, however, that the accused and his counsel should be informed of the outcome of the trial as soon as the results are determined.

Article 54. Record of trial.

Section (a) provides for the maintenance and authentication of records of trial by general courts-martial. This section differs from a comparable provision in Article of War 33 in that now the law officer and the president authenticate a record of trial by general court-martial, whereas under Article of War 33 the trial counsel and the president authenticated such record.

[The Omnibus Bill would amend section (a) so that a summarized record of trial could be made for all general and special courts-martial, not including a bad conduct discharge or a greater sentence that could otherwise be adjudged by a special court-martial.]

[The American Legion Bill would amend section (a) and require that all general and special courts-martial records of trial be authenticated by the law officer and the senior member present.]

Section (b) provides for the maintenance and authentication of records of trial by special and summary court-martial. The authentication of these records is left to regulations prescribed by the president. This section is derived from Article of War 34.

[Section (b) as contemplated by the Omnibus Bill will allow an accused to have a verbatim record of trial by general court-martial made at his own expense where the same is not required by law.]

Section (c) is new and provides that a copy of the record of trial in each general and special court-martial case be given to the accused as soon as authenticated. Under Article of War 111 a copy of the general court-martial record was given to the accused if he demanded it. Under the prior Navy practice the accused was automatically given a copy of the record of each general court-martial. This article, of course, goes further than either the prior Army or Navy practice.

Article 55. Cruel and unusual punishments prohibited.

This article prohibits cruel and unusual punishments and, generally speaking, re-enacted existing provisions of law. See comment under the Articles of War of 1874, supra, wherein the punishments of flogging, branding, marking, and tattooing were first prohibited in the Army.

Article 56. Maximum limits.

This article authorizes the President to establish the maximum limits of punishment for any offense except one for which a mandatory punishment is prescribed. There was no change in substance from the prior comparable Army provision.

Article 57. Effective date of sentences.

This article is new. Section (a) prohibits the forfeiture of pay or allowances coming due before the date of approval by the convening authority. Formerly, in the Army, pay and allowances which became due prior to the date of approval of the sentence by the convening authority could be forfeited. Under this section, however, the forfeiture of pay and allowances becoming due after the date of approval by the convening authority, but before the date of final approval, is permitted.

Section (b) provides that a sentence to confinement begins to run on the date adjudged.

Section (c) provides that all other sentences shall become effective on the date ordered executed.

Article 58. Execution of confinement.

Section (a) authorizes any sentence of confinement adjudged by court-martial or other military tribunal to be carried into execution by confinement in any place of confinement under the control of any of the armed forces. In addition, it authorizes confinement in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. This latter provision was derived principally from prior Naval law.

Section (b) was derived principally from Article of War 37 and provides that the omission of words "hard labor" in any sentence adjudging confinement shall not be construed as depriving the authority executing such sentence of the power to require hard labor as a part of the punishment.

Article 59. Error of law; lesser included offense.

Section (a) was adapted from Article of War 37, and a comparable provision of Naval Courts and Boards, and provides that a finding or

sentence shall not be held incorrect because of an error of law unless the error materially prejudices the substantial rights of the accused.

Section (b) was derived from Articles of War 47 and 49 and the Manual for Courts-Martial, U. S. Army, 1949. It provides reviewing authorities with the power to approve or affirm lesser included offenses. See Article 79 for a definition of a lesser included offense.

Article 60. Initial action on the record.

This article prescribes who may take initial action on records of trial of courts-martial. It was derived mainly from Article of War 47.

Article 61. Same--General court-martial records.

This article provides that the convening authority must in every general court-martial case obtain the written opinion of his Staff Judge Advocate thereon prior to taking his action. This article was drawn principally from a comparable provision in Article of War 47.

Article 62. Reconsideration and revision.

This article provides the conditions where a convening authority may return cases to the court for reconsideration and review.

No provision similar to section (a) was in either the Articles of War or the Articles for the Government of the Navy. Under the prior practice in all of the services, however, the convening authority possessed such power.

Section (b) incorporates similar provisions found in Article of War 40 and prohibits returning a record for reconsideration of a finding of not guilty, a ruling which amounts to a finding of not guilty, or increasing the severity of the sentence (except where a mandatory sentence is involved).

Article 63. Rehearings.

Section (a) provides authority for a convening authority to order a rehearing where he disapproves the findings and sentence, except where there is a lack of sufficient evidence in the record to support the findings. The Army has had a similar provision in the Articles of War since 1920.

Section (b) sets forth certain restrictions on all rehearings. Mainly, (1) members at the rehearing must not have been members which first heard the case, (2) the accused may not be tried for any offense of which he was found not guilty at the first trial, (3) no sentence in excess of or more severe than the original sentence shall be imposed at the rehearing unless based upon findings of guilty not considered at the first trial or unless a mandatory sentence is involved.

Article 64. Approval by the convening authority.

This article authorizes the convening authority to approve only such findings of guilty and the sentence or such part or amount of the sentence as he finds correct in law and fact and determines should be approved. It conforms substantially to the prior practice in all of the services. This article should be read in conjunction with Articles 29 and 79. It is clear also that a convening authority may disapprove a finding or a sentence for any reason or for no reason at all.

Article 65. Disposition of records after review by the convening authority.

This article provides generally for the disposition of records of trial after review by the convening authority.

Section (a) incorporates prior Army practice under Article of War 35, and provides that after review general court-martial cases shall be sent to The Judge Advocate General.

Section (b) provides that records of trial by special courts-martial, where a bad-conduct discharge was adjudged and approved by the convening authority, must be forwarded to the officer exercising general court-martial jurisdiction over the command or directly to The Judge Advocate General. This provision was adapted from Article of War 36 except for the alternative of sending the record directly to The Judge Advocate General. This alternative was permitted in order to provide for situations where no judge advocate is assigned to the staff of the officer exercising general court-martial jurisdiction or where direct transmittal to The Judge Advocate General would be more expeditious. A record of trial by special court-martial forwarded to the officer exercising general court-martial jurisdiction must, if the sentence approved by such officer includes a bad-conduct discharge, then be forwarded to The Judge Advocate General. Any record of trial by special court-martial, where the sentence includes bad-conduct discharge, is ultimately forwarded to The Judge Advocate General for review by a board of review.

Section (c) is derived from Article of War 36 and permits the review of special courts-martial not involving a bad-conduct discharge and all summary courts-martial to be as prescribed by regulations, subject to the requirement that all such records be reviewed by an officer of The Judge Advocate General's Corps.

[The Omnibus Bill would make several amendments to the various sections of Article 65 which would have the result of no longer requiring general court-martial cases where the sentence did not include a bad-conduct discharge or was no greater than could otherwise be adjudged by a special court-martial to be forwarded for appellate review.]

[The American Legion Bill would amend section (b) of Article 65 so as to no longer require any special court-martial to receive

any review other than what is now required of summary courts-martial. This amendment is consistent with other amendments in the American Legion Bill which would prohibit a special court-martial from adjudging a bad conduct discharge.]

Article 66. Review by the board of review.

Section (a) provides for the composition and qualifications of members of boards of review. This section adopts the prior Army practice of review by a formerly constituted board. The required qualifications of the members are new. The proviso that members of the board of review may be either officers or civilians was adopted principally in order that the Coast Guard, which is under the jurisdiction of the Treasury Department during time of peace, could utilize civilians on their boards of review.

[The American Legion Bill would amend section (a) to provide that boards of review would be constituted by the Secretary of Defense (except for the Coast Guard). Board of review members serve until relieved by the Secretary of Defense and would be excluded from the not more than one thousand officers detailed to the Army general staff and also not subject to the present limitations that an officer may not serve at The Pentagon for more than four years. Members of the boards of review would be rated for efficiency by the secretary constituting the board, which in the case of the Army would be the Secretary of the Army.]

Section (b) provides for automatic review, whether or not the sentence is suspended, for certain types of cases which are specified. Types of cases when automatic review is required are substantially the same as those in a comparable provision in Article of War 50.

[The Omnibus Bill would amend section (b) so that review by a board of review would not be required in guilty plea cases unless the approved sentence extended to death, affected a general officer, or extended to the dismissal of a commissioned officer or cadet.]

Section (c) provides that the board shall act only with respect to the findings and sentence approved by the convening authority. This provision insures that the findings or sentence may not be increased on appellate review. This section also provides that the board shall affirm only such findings of guilty, and the sentence or such part or amount of the sentence, which it determines correct in law and fact and determines, on the basis of the entire record, should be approved. It is also provided that the board may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact. This latter provision made its first appearance in the law as a result of the Elston Act of 1948. See principal change 21 thereunder.

Section (d) grants specific authority to the board of review to order rehearings. Inferentially, this authority is subject to the limitations of Article 63b. This provision was derived from Article of War 52 and effected no change for the Army.

Section (e) provides that where appellate review is complete at the board of review level, The Judge Advocate General will instruct the convening authority to take action in the case in accordance with the board's decision. The last sentence of this section is the statutory basis for a convening authority to dismiss charges where a rehearing has been ordered by the board of review but the convening authority finds that to hold a rehearing would be impracticable.

[The Omnibus Bill would amend section (e) to give The Judge Advocate General authority to dismiss the charges whenever a board of review orders a rehearing and he finds a rehearing impracticable.]

Section (f) provides statutory authority for The Judge Advocates General to prescribe uniform rules of procedure for proceedings before boards of review.

Article 67. Review by the Court of Military Appeals.

This article established the United States Court of Military Appeals which consists of three civilian judges. Thus, the most revolutionary change which has ever been incorporated into military justice was made. Under all prior law applicable to each of the services, appellate review was conducted solely within the military Department.

Section (a) makes provision for establishing the United States Court of Military Appeals, who may serve as judges, and provides for their compensation. The section also provides for the term of office and makes provision for removal and for substitution in case of disability.

Section (b) provides for the automatic review of certain cases and the review of other cases on petition of the accused.

Section (c) provides the time limit (30 days) in which an accused must petition for review by the Court of Military Appeals after the decision of a board of review is rendered.

Section (d) sets forth the issues which may be considered by the Court in various cases and is similar to a comparable provision for boards of review under Article 66(c). This section also provides that the Court of Military Appeals may take action only with respect to matters of law. Thus, the Court has no authority to weigh evidence, judge credibility of witnesses, or determine controversial questions of fact.

[The American Legion Bill would amend Article 67 so as to give the Court of Military Appeals the same authority as boards of review now have under Article 66(c) with respect to the findings and sentence, namely to weigh evidence, judge credibility of witnesses, and determine controverted questions of fact.]

Section (e) is the statutory authority for the Court of Military Appeals to order rehearings. It provides the same authority for the Court as is provided for boards of review in Article 66(b).

Section (f) has generally the same purpose as Article 66(e) with respect to boards of review.

[The Omnibus Bill would amend section (f) and give The Judge Advocate General authority to dismiss the charges whenever the Court of Military Appeals has ordered a rehearing and he finds a rehearing impracticable.]

Section (g) provides that the members of the Court of Military Appeals and the Judge Advocates General (which includes the General Counsel of the Treasury Department) shall meet annually to survey the operation of the Code and report to the Congress and the Secretaries. These persons are generally referred to as the Code Committee.

Article 68. Branch offices.

This article provides for the establishment of branch offices of The Judge Advocate General with distant commands, and the authority to establish boards of review in such branch offices. It further provides that the Assistant Judge Advocate General in charge of such a branch office, and the boards of review therein, are empowered with the same functions as The Judge Advocate General and boards of review in the Office of The Judge Advocate General.

Article 69. Review in the office of The Judge Advocate General.

This article provides for appellate review in the Office of The Judge Advocate General of every general court-martial case in which there has been a finding of guilty and a sentence (thus excluding acquittals) where appellate review is not otherwise provided for in Article 66. This article incorporates a comparable provision in Article of War 50.

[The Omnibus Bill would amend Article 69 and give The Judge Advocate General the power to take corrective action on cases reviewed in his office under this article to the same extent that a board of review may take corrective action on cases reviewed by it.]

Article 70. Appellate Counsel.

This article is entirely new and is included in the Code in order that the accused may be represented on appellate review by a qualified lawyer. It provides generally for the appointment of appellate counsel both for the Government and the accused. In addition, it specifies the duties of appellate counsel. It also contains a proviso, in section (d), that the accused may in any event be represented on appellate review by civilian counsel, if provided by the accused.

Article 71. Execution of sentence; suspension of sentence.

This article provides the conditions under which various sentences of courts-martial may be adjudged. It is also the authority for the suspension of courts-martial sentences. Section (a) pertains to sentences extending to death or involving general officers; section (b) pertains to sentences of dismissal of an officer or cadet; section (c) pertains to any sentence which includes, unsuspended, a dishonorable discharge or bad conduct discharge or confinement for one year or more; and section (d) pertains to all other court-martial sentences.

The various sections of this article generally follow the prior Army provisions except that the convening authority under the present Code is now given power to suspend.

√The Omnibus Bill would amend section (a) and make the death penalty include total forfeitures by implication.√

√The Omnibus Bill would also amend section (d) and allow execution of each portion of a sentence, other than that portion of the sentence extending to dismissal of a commissioned officer or a cadet, without secretarial action.√

√The Omnibus Bill would also amend section (b) consistent with the proposed amendment to section (b) so that all court-martial sentences and portions of sentences (excluding death, general officer cases, and dismissal cases) could be ordered executed by the convening authority unless suspended.√

Article 72. Vacation of suspension.

This article is new and provides for the procedure which must be had before a sentence of a special court-martial which includes a bad conduct discharge, or any general court-martial sentence, may be vacated. This article has recently assumed greater importance in view of several decisions by the Court of Military Appeals to the effect that the "technical suspension" so long used by the Army may not be vacated without a hearing of the type provided for by this article.

Article 73. Petition for a new trial.

This article provides that an accused may, any time within one year after approval by the convening authority of a serious court-martial sentence, apply for a new trial on the grounds of newly discovered evidence or fraud on the court. It also provides who shall act on this petition under certain circumstances. This article is substantially similar to Article of War 53.

[The Omnibus Bill would amend Article 73 to provide for a two-year period for application of a new trial. The proposed amendment would also allow a new trial to be ordered on a part of the findings only and would also allow The Judge Advocate General to take corrective action upon an application for a new trial by modifying or vacating the findings and sentence in whole or in part.]

Article 74. Remission and suspension.

Under this article the Secretary of a Department may review the sentence of any court-martial. It gives the Secretary clemency and parole powers which gives him ultimate control of sentence uniformity.

Article 75. Restoration.

This article is new and provides for the restoration of all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved. This article is also applicable to new trials and rehearings where the findings or sentence at the second trial are less than the findings or sentence at the first trial.

Article 76. Finality of court-martial judgments.

This article provides for the finality of courts-martial judgments after such review as otherwise provided by the Code has been completed.

[The American Legion Bill would amend Article 76 and provide that the finality of courts-martial proceedings would also be subject to review by a separation review board.]

Articles 77 - 134.

Articles 77-134 are the punitive articles of the Code which set out and define the different offenses over which the Uniform Code confers jurisdiction. The committee which drafted the Uniform Code observed during their studies of the Articles of War and the Articles for the Government of the Navy that, although each defined most of the so-called military offenses, neither defined all of such offenses.

Moreover, there were some offenses prescribed by each peculiar to the particular service. In addition, each of these former systems of military justice defined some offenses not defined by the other. In general, the civil type crimes were not defined by either the Articles of War or the Articles for the Government of the Navy. In the case of the Army, however, the Manual for Courts-Martial, U. S. Army, 1949, did spell out or define the majority of the civil offenses. The same was true in so far as the Navy was concerned. In this field too, however, there was also some variance between the two systems in defining offenses.

The committee which drafted the Code, therefore, examined each offense common to both of the services and tried as closely as possible to use the definition for each particular offense that was common to both services; and to adapt whatever ideas were felt worthwhile from some of the more modern state codes. In addition, there were some definitions needed in the punitive articles which had theretofore not been present. For example, the Uniform Code defines principals in Article 77, makes provision for lesser included offenses in Article 79, and defines an accessory after the fact in Article 78. In addition, the offense of solicitation is specifically spelt out in Article 82.

√The Omnibus Bill would amend Article 95 to eliminate the present distinction between escape from custody and escape from confinement.√

√The American Legion Bill would amend Article 98 by inserting a specific provision that a failure to deliver offenders to civil authorities, as provided for in Article 14 as amended by the American Legion Bill, would be an offense.√

√The American Legion Bill would amend Article 118 to specifically provide that no person may be tried by court-martial for murder committed in the United States in time of peace. See the proposed American Legion amendment to Article 14.√

√The American Legion Bill would amend Article 120 to provide that no person may be tried by court-martial for rape committed in the United States in time of peace.√

Article 135. Courts of inquiry.

This article is a combination of the former Army and Navy provisions respecting courts of inquiry.

Section (a) adopts former Navy practice and grants a broader authority to convene courts of inquiry than was formerly the practice in the Army.

The provision in section (b) for a counsel to assist the court in matters of law, presentation of evidence, and keeping of the record is new.

Section (c), which provides that any person whose conduct is subject to inquiry shall be designated a party, was inserted to allow anyone who was involved in a court of inquiry to intervene in order to protect their rights and reputation.

Sections (d) and (e) providing for challenges and oaths conform to both the prior Army and Navy practice.

Section (f), by providing that witnesses before courts of inquiry will be summoned and may testify as provided for courts-martial, has the effect of requiring such witnesses to be sworn. This conforms to the prior Army practice.

Sections (g) and (h), providing respectively for making findings without opinion or recommendations and for keeping and authenticating the record, conform to both the prior Army and Navy practices.

Article 136. Authority to administer oaths and to act as notary.

This article is the authority for certain persons to administer oaths and to exercise generally powers of a notary public.

[The American Legion Bill would amend Article 136 to provide that the law officer of a special court-martial (proposed in other American Legion amendments) would have the authority to administer oaths and act as a notary.]

Article 137. Articles to be explained.

This article was derived from Article of War 110 and provides that certain articles of the Code be carefully explained to every enlisted person at the time of his entrance on active duty or within six days thereafter. It also provides for subsequent explanation after the completion of six months active duty and for each re-enlistment. It further provides that the text of the Code, and any regulations prescribed by the President thereunder, shall be made available to any person on active duty upon his request for his personal observation. This article was derived from Article of War 110 which required that certain articles be read. This change from "read" to "explain" was made because it was felt that a careful explanation would be of more value than a mere reading.

Article 138. Complaints of wrongs.

This article provides a procedure whereby any member of the armed forces who believes himself wronged by his commanding officer may make complaint to the officer exercising general court-martial jurisdiction, which officer must examine the complaint and take such measures as the circumstances may justify. This article is adapted from Article of War 21.

Article 139. Redress of injuries to property.

This article is a redraft of Article of War 105, with changes, to permit the Secretary of the Department to prescribe the procedures for redress of injuries to property by members of the armed forces. The Secretary of the Army has implemented this article by the promulgation of Army Regulation 25-80.

Article 140. Delegation by the President.

This article provides that the President may delegate any authority vested in him under this Code and may provide for the subdelegation of any authority.

ANNEX B

THE SECRETARY OF DEFENSE

WASHINGTON

11 December 1958

Dear Mr. Speaker:

There is forwarded herewith a draft of legislation "To amend title 10, United States Code, as relates to the Uniform Code of Military Justice", together with a sectional analysis thereof.

This proposal is a part of the Department of Defense Legislative Program for 1959, and the Bureau of the Budget has advised that there is no objection to its transmittal to Congress for consideration. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by Congress.

Purpose of the Legislation

The purpose of this proposed legislation is to improve the administration of military justice in the armed forces. This proposal is based on recommendations by the Court of Military Appeals, the Judge Advocates General of the Army, Navy and Air Force, and the General Counsel of the Department of the Treasury, made at previous annual meetings as required by section 867(g) of title 10, United States Code. In essence, this proposal is designed to eliminate some of the procedural difficulties and delays which have arisen under the Uniform Code of Military Justice since May 31, 1951, and to provide for more prompt and more efficient administration of military justice, both from the standpoint of the individual and the Government.

The principal features of the proposed legislation are as follows:

1. Single-officer courts. The proposed legislation, which is based upon Rule 23 of the Federal Rules of Criminal Procedure, would permit an accused to request and, if the convening authority consents thereto, be tried before a single qualified officer, instead of a multiple-member special court-martial. The adoption of such a procedure will result in a reduction of both time and manpower normally expended in trials by special courts-martial. The rights of the accused in such cases are protected by the requirement that the officer acting as a special court-martial have the basic qualifications of a law officer under article 26(a) and that he be certified as qualified for that duty by the Judge Advocate General.

2. Records of trial. At the present time, the use of a summarized record of trial is permitted in trials by special courts-martial when the

accused is acquitted of all charges and specifications or when the sentence does not extend to a bad-conduct discharge. On the other hand, all records of trial by general courts-martial are complete verbatim accounts of the proceedings thereof, even though the sentence is one which, if adjudged by a special court-martial, could be summarized. The proposed bill would correct this situation by providing for a complete verbatim record in only those cases in which sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial. All other records of trial would contain such matter as may be required by regulations prescribed by the President.

3. Review of records of trial. The present law requires all general court-martial cases to be forwarded to the Judge Advocate General even though the sentence of the court is such that, if adjudged by a special court-martial, the record of the special court-martial would not have been so forwarded. The proposed bill corrects this situation. It provides that general court-martial cases in which the sentence as approved does not include a bad-conduct discharge or does not exceed a sentence that could have been adjudged by a special court-martial shall be transmitted and disposed of in the same manner as similar special court-martial cases.

The present law requires that all sentences extending to a punitive discharge or confinement for one year or more be reviewed by a board of review. The proposed legislation provides that cases now required to be reviewed by a board of review only because the sentence includes a punitive discharge or confinement for one year or more will be examined in the office of the Judge Advocate General in accordance with article 69, rather than by a board of review, if the accused pleaded guilty and if he stated in writing that he does not desire review by a board of review. The enactment of this provision would materially lessen the number of cases which need to be reviewed by boards of review and will thereby diminish the over-all time required to process court-martial cases. As this procedure upon review would be employed only in those cases where the accused has pleaded guilty, it is believed that his substantial rights will not be prejudiced thereby.

The present law requires the Judge Advocate General to refer article 69 cases to a board of review for corrective action when he finds all or part of the findings or sentence incorrect in law or fact. In a great many cases, the irregularities concerned involve matters well settled in the law, and in those cases the board of review's action amounts to no more than the application of those well-settled principles. This situation results in an unnecessary burden on the boards of review and unduly increases the time required to process court-martial cases. To eliminate this unnecessary reference to a board of review, the proposed legislation authorizes the Judge Advocate General to correct the irregularity or injustice, vesting in him the same powers and authority with respect to those cases that a board of review has. It will be noted that the Judge Advocate General remains authorized to refer any

article 69 case to a board or review in his discretion, and it is required that any finding or sentence incorrect in law or in fact be corrected either by a board of review or by the Judge Advocate General.

4. Powers of the Judge Advocate General. The proposed legislation authorizes the Judge Advocate General to dismiss the charges when the Court of Military Appeals or the board of review orders a rehearing which the Judge Advocate General finds impracticable. It is believed that the Judge Advocate General is, in many cases, in the best position to dismiss the charges himself or to determine whether or not a rehearing is impracticable. Further, the administrative necessity of forwarding the record to the convening authority would, in many cases, be eliminated.

5. Execution of sentences. Currently, about 407 days elapse between the date an accused is tried by court-martial and the date his sentence is ordered executed after review by the United States Court of Military Appeals. As a result, many prisoners complete confinement before their cases have been completely reviewed. Further, since an unsentenced prisoner is not subject to the same treatment as a sentenced prisoner, the administration of confinement facilities is unduly complicated. In some instances, delays in completion of the required review have led to complex administrative problems and loss of morale. Consequently, the proposed legislation provides that a convening authority may order executed all portions of a sentence except that portion involving dismissal, dishonorable or bad-conduct discharge, or affecting a general or flag officer, thus eliminating the differences between sentenced and unsentenced prisoners. No sentence extending to death may be executed until approved by the President, although the proposed legislation will remove an anomalous result under the present code by providing that an accused sentenced to death forfeits all pay and allowances, and that the forfeiture may be made effective on the date the sentence is approved by the convening authority.

6. New Trial. To better protect the rights of an accused, the proposed legislation extends the time within which an accused may petition for a new trial to two years from the date the convening authority approves the sentence. Further, the board of review, the United States Court of Military Appeals, and the Judge Advocate General would be permitted to grant more comprehensive relief than is now possible.

7. Votings and rulings. The proposed bill provides that a law officer shall rule with finality upon a motion for a finding of not guilty. It is anomalous to allow the lay members of a court-martial to overrule the law officer on a question which is purely an issue of law.

8. Punitive articles. The present code does not provide specific statutory authority for the prosecution of bad-check offenses. The proposed legislation adds an additional punitive article which contains provisions similar to the bad-check statutes of the District of Columbia

and the State of Missouri, including a provision that a failure to pay the holder of a bad check the amount due within five days shall be prima facie evidence of an intent to defraud or deceive. One of the difficulties arising under existing law is the necessity to prosecute bad-check offenses under one of three separate articles (121, 133 or 134), none of which may be considered as a bad-check statute. Because of technical difficulties that arise as a result of the unfortunate pleading of the wrong article, an obviously guilty person sometimes escapes punishment. There are many difficulties inherent in obtaining a conviction of an accused for a bad-check offense without proof of specific intent. Because of this, the proposed legislation is desirable to provide specific statutory authority for the prosecution of bad-check offenses.

9. Nonjudicial punishment. Good military discipline requires that a commanding officer be given greater authority in imposing nonjudicial punishment. Consequently, the proposed legislation provides that a commanding officer in a grade of major or lieutenant commander or above may confine an enlisted member of his command for a period of not more than seven days, or impose a forfeiture of one-half of one month's pay. Under article 15, officers may be punished for minor offenses, such as traffic violations, by imposition of forfeitures, and they are thereafter not handicapped professionally by a trial by court-martial. However, in order to achieve an effective monetary punishment for enlisted members in similar cases, it is necessary to resort to a trial by court-martial, resulting in a permanent black mark on the enlisted member's record in the form of a conviction by court-martial. The change contemplated by the proposed legislation would permit prompt and effective disposition of such minor offenses. In addition, a commanding officer exercising general court-martial jurisdiction may impose on an officer or warrant officer of his command forfeiture of one-half of his pay for two months, instead of one month as now provided in the code. The one month limitation has proved unsatisfactory to commanders in the field and is not cured by the fact that an officer may be tried by a special court-martial. An officer's present and future value within his command is seriously and permanently impaired by the publicity attendant to trial by court-martial. When such an event occurs, prompt transfer of the officer after trial is imperative, regardless of the outcome. Such a procedure is costly in time, money and manpower. It is believed to be essential that commanding officers retain their present power to try officers by special court-martial as exceptional circumstances warrant. However, it is considered desirable to increase the punitive powers of article 15 so that an adequate punishment can be imposed upon an officer for a relatively minor offense.

10. Miscellaneous. To facilitate administration of confinement facilities under the United Nations or other allied commands, the proposed legislation authorizes the confinement, in United States confinement facilities, of members of the armed forces of the United States with the members of the armed forces of friendly foreign nations.

In addition, the proposed legislation makes other changes in the present code of a technical nature, designed generally to improve the administration of military justice within the framework of the existing code.

Cost and Budget Data

The enactment of this proposal will cause no increase in the budgetary requirements for the Department of Defense but will result in economies in the utilization of manpower.

Sincerely yours,

/s/

Donald A. Quarles
Deputy Secretary of Defense

Inclosures

Honorable Sam Rayburn

Speaker of the House of Representatives

AN IDENTICAL LETTER HAS BEEN PREPARED FOR THE PRESIDENT OF THE SENATE.

1 States confinement facilities with
2 members of the armed forces of friendly
3 foreign nations."

4 (3) Section 815 is amended --

5 (A) by striking out in subsection (a)(1)(C)
6 the words "one month's pay" and inserting
7 the words "his pay per month for a period
8 of not more than two months" in place thereof;

9 (B) by striking out at the end of subsection
10 (a)(2)(E) the word "or";

11 (C) by striking out the period at the end of
12 subsection (a)(2)(F) and inserting a semicolon
13 in place thereof; and

14 (D) by adding the following new clauses at the
15 end of subsection (a)(2):

16 "(G) if imposed by an officer in the
17 grade of major or lieutenant commander
18 or above, forfeiture of not more than
19 one-half of one month's pay; or

20 (H) if imposed by an officer in the
21 grade of major or lieutenant commander or
22 above, confinement for not more than seven
23 consecutive days."

24 (4) Section 816 is amended by striking out the
25 word "; and" in clause (2) and inserting the
26 words "or only of a law officer who is certified

1 to be qualified for duty as a single-
2 officer special court-martial by the Judge
3 Advocate General of the armed force of which
4 he is a member if, before the court is convened,
5 the accused, knowing the identity of the law
6 officer, and upon advice of counsel, requests
7 in writing a court composed only of a law
8 officer and the convening authority has
9 consented thereto; and" in place thereof.

10 (5) Sections 822(b) and 823(b) are each
11 amended to read as follows:

12 "(b) If any person described in sub-
13 section (a), except the President of the
14 United States, is an accuser, the court
15 must be convened by a competent authority
16 not subordinate in command or grade to the
17 accuser, and may in any case be convened
18 by a superior competent authority."

19 (6) Section 825(a) is amended by adding the
20 following new sentence at the end thereof:

21 "However, to be eligible for appointment
22 as a single-officer special court-martial,
23 the officer must have the qualifications
24 specified for a law officer in section 826(a)

1 of this title (article 26(a)) and must be
2 certified to be qualified for duty as a
3 single-officer special court-martial by
4 the Judge Advocate General of the armed
5 force of which he is a member."

6 (7) Section 837 is amended by striking out in
7 the first sentence thereof the words "nor any
8 other commanding officer" and inserting the words
9 "or any other commanding officer, or any officer
10 serving on the staffs thereof" in place thereof.

11 (8) Section 841(b) is amended by inserting
12 after the words "law officer" the words "and
13 an officer appointed as a single-officer special
14 court-martial".

15 (9) Section 851 is amended--

16 (A) by striking out in the second sentence
17 of subsection (b) the words "a motion for
18 a finding of not guilty, or";

19 (B) by inserting in the third sentence of
20 subsection (b) after the word "trial" the
21 words "except a ruling on a motion for a
22 finding of not guilty that was granted";
23 and

24 (C) by adding the following new subsection:

25 "(d) Subsections (a), (b), and (c) of

1 this section do not apply to a
2 single-officer special court-
3 martial. An officer who is appointed
4 as a single-officer special court-
5 martial shall determine all questions
6 of law and fact arising during the
7 trial and, if the accused is con-
8 victed, adjudge and appropriate
9 sentence."
10 (10) Section 854 is amended to read as follows:
11 "§ 854. Art. 54. Record of trial
12 "(a) Each court-martial shall make a
13 separate record of the proceedings of the
14 trial of each case brought before it. A
15 record of the proceedings of a trial in
16 which the sentence adjudged includes a
17 bad-conduct discharge or is more than that
18 which could be adjudged by a special court-
19 martial shall contain a complete verbatim
20 account of the proceedings and testimony
21 before the court, and shall be authenti-
22 cated in such manner as the President
23 may, by regulation, prescribe.
24 All other records of trial shall contain

1 such matter and be authenticated in
2 such manner as the President may,
3 by regulation, prescribe.

4 "(b) A copy of the record of the
5 proceedings of each general and special
6 court-martial shall be given to the accused
7 as soon as authenticated. If a verbatim
8 record of trial by general court-martial is
9 not required by subsection (a), the accused
10 may buy such a record under such regulations
11 as the President may prescribe.

12 (11) Section 857 is amended by adding the
13 following new sentence at the end of sub-
14 section (a):

15 "A sentence to death includes forfeiture
16 of all pay and allowances and dishonorable
17 discharge. The forfeiture may apply to
18 all pay and allowances becoming due on or
19 after the date on which the sentence is approved
20 by the convening authority."

21 (12) Section 865 is amended--

22 (A) by amending subsection (a) to read
23 as follows:

24 "(a) When the convening authority has

1 taken final action in a general
2 court-martial case and the sentence
3 approved by him includes a bad-
4 conduct discharge or is more than that
5 which could have been adjudged by a
6 special court-martial, he shall send
7 the entire record, including his action
8 thereon and the opinion of the
9 staff judge advocate or legal officer,
10 to the appropriate Judge Advocate
11 General.";

12 (B) by striking out in subsection (b) the
13 words "to be reviewed by a board of review"
14 wherever they appear therein; and

15 (C) by amending subsection (c) to read as
16 follows:

17 "(c) All other records of trial by
18 court-martial shall be reviewed by--

19 (1) a judge advocate of the Army
20 or Air Force;

21 (2) an officer of the Navy or
22 Marine Corps on active duty who
23 is a member of the bar of a Federal
24 court or of the highest court of a
25 State; or

1 (3) in the Coast Guard, or the
2 Department of the Treasury, a
3 law specialist or member of the
4 bar of a Federal court or of the
5 highest court of a State."

6 (13) Section 866 is amended--

7 (A) by amending subsection (b) to read
8 as follows:

9 "(b) The Judge Advocate General shall
10 refer to a board of review each record
11 of trial by court-martial in which the
12 approved sentence--

13 (1) extends to death;

14 (2) affects a general or flag
15 officer;

16 (3) extends to the dismissal of a
17 commissioned officer or a cadet
18 or midshipman; or

19 (4) includes a dishonorable or bad-
20 conduct discharge, or confinement
21 for one year or more, unless the
22 accused pleaded guilty to each
23 offense of which he was found
24 guilty and has stated in writing
25 after the convening authority

1 acted in his case, that he
2 does not desire review by a
3 board of review."; and
4 (B) by amending subsection (e) to read as
5 follows:

6 "(e) The Judge Advocate General may
7 dismiss the charges whenever the board
8 of review has ordered a rehearing and
9 he finds a rehearing impracticable.
10 Otherwise, the Judge Advocate General
11 shall, unless there is to be further
12 action by the President, the Secretary
13 concerned, or the Court of Military
14 Appeals, instruct the convening
15 authority to take action in accordance
16 with the decision of the board of
17 review. If the board of review has
18 ordered a rehearing and the convening
19 authority finds a rehearing impracti-
20 cable, he may dismiss the charges."

21 (14) Section 867 is amended by inserting the
22 following new sentence after the first
23 sentence of subsection (f):

24 "The Judge Advocate General may dismiss

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the charges whenever the Court of
Military Appeals has ordered a rehearing
and he finds a rehearing impracticable."

(15) Section 869 is amended to read as follows:

"§ 869. Art 69. Review in the office of the
Judge Advocate General

"Every record of trial by court-martial
forwarded to the Judge Advocate General
under section 865 of this title (article 65),
the appellate review of which is not other-
wise provided for by section 865 or 866 of
this title (article 65 or 66), shall be
examined in the office of the Judge Advocate
General. If any part of the findings or
sentence is found unsupported in law, the
Judge Advocate General shall either refer
the record to a board of review for review
under section 866 of this title (article 66)
or take such action in the case as a board
of review may take under section 866(c) and (d)
of this title (article 66(c) and (d)). If
the record is reviewed by a board of review,
there may be no further review by the Court
of Military Appeals, except under section
867(b)(2) of this title (article 67(b)(2))."

1 (16) Section 871 is amended--

2 (A) by striking out in subsection (b)
3 the first sentence and inserting the
4 following in place thereof:

5 "That part of a sentence extending
6 to the dismissal of a commissioned
7 officer or a cadet or midshipman may
8 not be executed until approved by the
9 Secretary concerned, or such Under
10 Secretary or Assistant Secretary as
11 may be designated by him.";

12 (B) by amending subsection (c) to read
13 as follows:

14 "(c) That part of a sentence
15 extending to dishonorable or bad-conduct
16 discharge may not be executed until
17 approved by the Judge Advocate General
18 or affirmed by a board of review, as
19 the case may be, and, in cases reviewed
20 by it, affirmed by the Court of Military
21 Appelas."; and

22 (C) by inserting in subsection (d) after the
23 words "court-martial sentences" the words
24 "and parts of sentences".

1 (17) Section 873 is amended--
2 (A) by striking out in the first sentence
3 after the word "within" the words "one
4 year" and inserting words "two years"
5 in place thereof; and
6 (B) by striking out the last sentence and
7 inserting the following in place thereof:
8 "The board of review or the Court of
9 Military Appeals, as the case may be,
10 shall determine whether a new trial,
11 in whole or in part, should be granted
12 or shall take appropriate action under
13 section 866 or 867 of this title
14 (article 66 or 67), respectively.
15 Otherwise, the Judge Advocate General
16 may grant a new trial in whole or in
17 part or may vacate or modify the
18 findings and sentence in whole or in
19 part."
20 (18) Section 895 is amended by striking out the
21 words "custody or confinement" and inserting the
22 words "physical restraint lawfully imposed" in
23 place thereof.
24 (19) Subchapter X of chapter 47 is amended--

1 (A) by inserting the following new section
2 after section 923:

3 "§ 923a. Art. 123a. Making, drawing, or
4 uttering check,
5 draft, or order
6 without sufficient
7 funds

8 "Any person subject to this chapter who--

9 (1) for the procurement of any article
10 or thing of value, with intent to defraud; or
11 (2) for the payment of any past due obligation,
12 or for any other purpose, with intent to de-
13 ceive; makes, draws, utters, or delivers any
14 check, draft, or order for the payment of money
15 upon any bank or other depository, knowing at the
16 time that the maker or drawer has not or will not
17 have sufficient funds in, or credit with, the
18 bank or other depository for the payment of that
19 check, draft, or order in full upon its presentment,
20 shall be punished as a court-martial may direct.
21 The making, drawing, uttering, or delivering by a
22 maker or drawer of a check, draft, or order,

SECTIONAL ANALYSIS

of a bill

To amend title 10, United States Code, as relates to the Uniform Code of Military Justice.

Section 1(1) amends article 1 by defining the term "convening authority".

Section 1(2) amends article 12 to provide that a member of an armed force of the United States may be confined in United States confinement facilities with members of the armed forces of friendly foreign nations.

Section 1(3) amends article 15 to authorize a commanding officer exercising general court-martial jurisdiction to impose upon an officer of his command forfeiture of one-half of his pay per month for a period of two months. It also authorizes a commanding officer in a grade of major or lieutenant commander or above to impose upon an enlisted man of his command forfeiture of not more than one-half of one month's pay or confinement for not more than seven consecutive days.

Section 1(4) amends article 16 to provide that a special court-martial shall consist of only a law officer if the accused, before the court is convened, so requests in writing and the convening authority consents thereto. However, before he makes such a request, the accused is entitled to know the identity of the law officer and to have the advice of counsel.

Section 1(5) amends articles 22(b) and 23(b) to provide that, except for the president, a convening authority not subordinate in command or grade to the accuser shall be "competent authority" within the meaning thereof, and that a court may, in any case, be convened by superior competent authority when considered desirable by him.

Section 1(6) amends article 25(a) to provide that the officer acting as a special court-martial must have the qualifications specified for a law officer in article 26(a) and, in addition, must be certified to be qualified for duty as a single-officer special court-martial by the Judge Advocate General.

Section 1(7) extends the provisions of article 37 to include staff officers serving convening authorities and commanding officers.

Section 1(8) amends article 41(b) to provide that a single-officer special court-martial may be challenged only for cause.

Section 1(9) amends article 51 to provide that the law officer shall rule with finality on a motion for a finding of not guilty. If such a

motion is granted, however, he may not later change that ruling. It also provides that an officer acting as a special court-martial shall determine all questions of law and fact arising during the trial and, if the accused is convicted, adjudge an appropriate sentence.

Section 1(10) amends article 54 by requiring each court-martial to make a separate record of the proceedings of the trial in each case brought before it. In each case where the sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial, a verbatim account of the proceedings and testimony must be prepared and authenticated in accordance with regulations prescribed by the President. It also provides that if a verbatim account is not required, the accused may buy such a record.

Section 1(11) amends article 57(a) to provide that an accused sentenced to death forfeits all pay and allowances and that the forfeiture may apply to all pay and allowances becoming due on or after the date the sentence is approved by the convening authority.

Section 1(12) amends article 65 to require the convening authority, when he has taken final action, to send to the appropriate Judge Advocate General each record of trial in which the sentence, as approved by him, includes a bad-conduct discharge or is more than that which could have been adjudged by a special court-martial. It also deletes language implying that all records of trial by special court-martial forwarded to the Judge Advocate General under that section must be reviewed by a board of review. It also provides for the review and disposition of all records of trial not otherwise provided for in article 65(a) and (b).

Section (13) amends article 66 to provide that a record of trial, which would otherwise be reviewed by a board of review because the sentence includes a dishonorable or bad-conduct discharge or confinement for one year or more, need not be reviewed by a board of review if the accused pleaded guilty to each offense of which he was found guilty and if he stated in writing after the convening authority acted in his case that he does not desire review by a board of review. It also authorizes the Judge Advocate General to dismiss the charges whenever he finds that a rehearing ordered by a board of review is impracticable.

Section 1(14) amends article 67(f) to authorize the Judge Advocate General to dismiss the charges whenever he finds that a rehearing ordered by the Court of Military Appeals is impracticable.

Section 1(15) amends article 69 to provide that every record forwarded to the Judge Advocate General under article 65, the appellate review for which is not otherwise provided by article 65 or 66, shall be

examined in the office of the Judge Advocate General. He may refer such a record to a board of review or he may take such action in the case as a board of review may under article 66(c) and (d). If the record is reviewed by a board of review, there will be no further review by the Court of Military Appeals except under article 67(b)(2). The effect of this amendment is to require examination in the office of the Judge Advocate General of those records of trial in which the sentence includes a dishonorable or bad-conduct discharge or confinement for one year or more which need not be reviewed by a board of review because the accused pleaded guilty.

Section 1(16) amends article 71 to provide that all portions of sentences of a court-martial may be ordered executed by the convening authority when approved by him, except that portion of the sentence involving death, dismissal, or dishonorable or bad-conduct discharge or affecting a general or flag officer. It describes those authorities which must approve a sentence before it may be executed. The parenthetical phrase "other than a general or flag officer" is omitted as surplusage in view of the express provision of article 71(a).

Section 1(17) amends article 73 to extend the time within which the accused may petition for a new trial to two years from the date the convening authority approves the sentence, and to provide that the Court of Military Appeals and the board of review may, in addition to determining whether a new trial in whole or in part should be granted, take appropriate action under article 66 or article 67, respectively. Further, the Judge Advocate General is authorized to grant a new trial in whole or in part, or to vacate or modify the findings and the sentence in whole or in part.

Section 1(18) amends article 95 to remove all distinction between confinement and custody.

Section 1(19) inserts an additional punitive article similar to the bad-check statutes of the District of Columbia (title 22, D. C. Code, sec. 1410) and the State of Missouri (Revised Statutes of Missouri 561.460, 561.470, 561.480).

Section 2 provides that these amendments become effective on the first day of the tenth month following the month in which enacted.

ANNEX C.

DEPARTMENT OF THE AIR FORCE

Washington

Office of the Secretary

April 14, 1959

Dear Mr. Chairman:

I refer to your request for the views of the Department of Defense on H.R. 3455, 86th Congress, a bill "To amend title 10, United States Code, in order to improve the administration of justice and discipline in the armed forces, and for other purposes." The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense thereon.

H.R. 3455 proposes certain amendments to the Uniform Code of Military Justice (10 U.S.C. 801 et seq.) apparently designed to accomplish two basic objectives, i.e., (1) to insure that every court-martial, regardless of type, has a qualified law officer thereon and that an accused has the right to services of counsel; and (2) the creation of an atmosphere completely free from any possibility of command control.

To achieve the above objectives, the bill would require the appointment of a qualified law officer to all special courts-martial and divest such courts of authority to adjudge punitive discharges; require officers appointed as summary courts-martial to be qualified for detail as law officers and establish an accused's right to military counsel before such courts; abolish the "president of the court" concept and vest his present functions in the law officer; empower the law officer to rule finally on all interlocutory questions except insanity; remove the Judge Advocates General from the command of their respective Chiefs of Staff and place them under the direct control of the General Counsel of the Department of Defense; except for members of boards of review place all judge advocate officers under the direct command control of their respective Judge Advocates General; provide for separate promotion lists, judge advocate-composed promotion boards, and distinctive insignia for all judge advocate officers; provide that all effectiveness reports on judge advocate officers, except for those serving on boards of review, be rendered by the Judge Advocates General; remove boards of review from the offices of the Judge Advocates General and place them under the Secretary of Defense with a proviso that the members thereof be rated for effectiveness by the Secretary; provide that the armed forces be divested of jurisdiction to try offenses proscribed by the Uniform Code of Military Justice, articles 118-132, in time of peace, if civilian authorities request delivery of the accused for trial therefor; completely divest the armed forces of jurisdiction to try murder and rape offenses; committed in time of peace in the United States, by courts-martial; vest all procedural courts-martial rule-making powers in the United States Court of Military Appeals; and empower the United States Court of Military Appeals to determine controverted questions of fact.

The Department of Defense is generally opposed to H.R. 3455.

The principle that law officers be appointed to all courts-martial and that accused persons before all courts-martial be afforded the right of counsel is highly impractical. During fiscal year 1958, a grand total of about 159,646 trials by special and summary courts-martial were held by the services, and it would be manifestly impossible, under current or reasonably expected manning in the foreseeable future, to provide personnel, qualified as law officers, in the numbers which would be required. Specifically, the Navy could not assign a qualified law officer to every ship; accordingly, commanders of offenders whose misconduct warrants more than non-judicial punishment would be faced with the impossible alternative of greatly delaying the proceedings or of completely foregoing appropriate disciplinary action. The provision allowing an accused the right of representation by counsel before a summary court-martial can be reasonably expected to result in routine requests for such counsel by each accused facing trial by that tribunal. In fairness to the Government, therefore, a trial counsel would have to be appointed in such cases, thus increasing the already intolerable manpower burden. Obviously, if the term "counsel" is interpreted to mean judge advocate (lawyer) personnel (and the Court of Military Appeals has so interpreted it), the manpower burden would be still further magnified. Attempted compliance with these provisions, utilizing presently available law officer and judge advocate manpower resources, would be costly, totally unsatisfactory, and cause great delays in trials with resultantly adverse effects upon morale.

No objection is interposed to extending the powers of the law officer and relegating the president of the court-martial to the position of "senior member" if these provisions of the bill are limited to general courts-martial only. However, further limiting the already severely circumscribed powers of the president of a court and divesting the ranking member of that honorary designation would not substantially enhance the position of the law officer. These provisions are opposed insofar as they apply to trials by special courts-martial due to the basic objection, stated above, to including a law officer on that court.

The provisions of the bill which would prohibit sentences to punitive (bad conduct) discharges by special courts-martial, and allied minor provisions relating to the form and disposition of that court's record of trial, represent an unwarranted curtailment of the court-martial's disciplinary powers. Congressional hearings on the Uniform Code of Military Justice, article 19 (10 U.S.C. 819), have hitherto established the absolute necessity for the punitive discharge authority of special courts-martial, especially in the case of the Navy, and that urgent necessity still exists. Further, the effect of a punitive discharge adjudged by special courts-martial upon veterans' benefits may be substantially less than in the case of a general court-martial's sentence to the same punitive discharge; thus, under the present system, certain cases warranting a sentence to a punitive discharge, but not the side effects of greater deprivation of veterans'

benefits, may be disposed of more economically, and more beneficially to the accused, by referral to special courts-martial for trial. Elimination of this dual and real benefit, accordingly, is resisted. Although the Army does not permit imposition of bad conduct discharges by special courts-martial (through non-authorization of court reporters and verbatim records of trial), it is not opposed to the continued existence of that authority in the Uniform Code of Military Justice inasmuch as the other services have a definite need for such authority.

The provisions of the bill designed to reorganize, realign, and reassign the Judge Advocates General, their respective departments, and the system of rating and assigning subordinate judge advocate officers, apparently are based upon the assumption that "command control" exists over courts-martial proceedings. This assumption is without foundation in fact; accordingly, such provisions of the bill as are keyed to it and calculated to eliminate so-called "command control" are unnecessary and inappropriate. It is noted that these provisions would allow the Secretary concerned to prescribe the duties of the Judge Advocate General of that armed force; yet, the Judge Advocates General would be under the direct control of and responsible to the General Counsel of the Department of Defense. These provisions, of course, are inconsistent and unworkable since it is axiomatic that one cannot serve two masters. The provisions of the bill which would require the Judge Advocates General to rate subordinate judge advocate officers for efficiency appears to be premised upon the assumption that judge advocate officers in the field perform military justice functions only. This assumption is unfounded since field judge advocate officers perform many and varied functions for their commanders which are not directly related to military justice matters. Such being the case, the Judge Advocates General could not possibly be aware of all the functions performed and could not, in fairness to all concerned, properly discharge these rating requirements if they are imposed upon them. Generally, the apparent desire to reorganize the structure of the Judge Advocate General departments ignores the important fact that the respective Judge Advocates General perform a great many duties not connected with military justice. Further, denying the Judge Advocates General the right to appoint board of review members would unduly restrict their assignment authority, control of personnel, and seriously impair, if not prohibit, their ability to perform their statutory duty, i.e., the administration of military justice within the respective armed forces.

The draft bill provides that the rules of procedure may be prescribed by the Court of Military Appeals; that the rules of procedure shall apply the principles of law and rules of evidence applicable to the trial of criminal cases in the United States District Court for the District of Columbia; and that, with certain exceptions, all questions of evidence shall be decided in accordance with the rules applied in the trial of criminal cases in the United States District Courts. Substantive principles of military law have evolved over a period of years from military

custom, experience, and the general principles applied by Federal courts everywhere. Adoption of those rules and concepts applicable only to the District of Columbia would mean abandonment of time-tested theories in favor of concepts designed to fit the needs of one small enclave. A single example is the insanity test adopted in the District in United States v. Durhan, 214 F. 2d 862 (App. D. C., 1954), which has been rejected by the United States Court of Military Appeals and by the appellate benches of almost every state in the Nation. It would seem far better to leave the drafters of rules of procedure unfettered by predetermined concepts of a single jurisdiction and to insist only that they be guided insofar as practicable by those principles applicable to Federal prosecutions generally. The provisions relating to civilian rules of evidence do not always fit the military situation. For example, the Federal law relating to searches and seizures is ill-adapted to the investigation of crime in overseas areas where there are no United States courts or commissioners from whom warrants may be obtained. Consider also the effect upon the services of the rule excluding confessions because of unduly delayed arraignment (Mallory v. United States, 354 U. S. 499 (1957); McNabb v. United States, 318 U.S. 332 (1943)). Congress has recognized this need for certain deviations from the Federal rules, and it allowed therefor by providing that the President could apply the principles of law and rules of evidence used in the United States district courts only "so far as he considers practicable." Further, this would constitute an unwarranted and unauthorized invasion of the constitutional authority of the President as Commander-in-Chief of the armed forces. Under the present system, the United States Court of Military Appeals is in a position to express its opinion to the President with respect to his regulation-making authority and, further, the Court of Military Appeals ultimately judicially determines whether they are legally consistent with the Uniform Code of Military Justice. The provisions of the bill which would authorize the United States Court of Military Appeals to judge the credibility of witnesses and determine controverted questions of fact would grant the court powers not usually exercised by most appellate courts, including the United States Supreme Court. Previous hearings on similar legislative proposals have resulted in rejection of this idea, and there is no indication that the Court itself desires this authority.

The inflexible requirement in the bill for the surrender of military personnel in the United States for trial by civil courts in all cases in which requests therefor are made, might well result in miscarriages of justice. There may be cases in which servicemen should not be released to civilian authorities for good and sufficient reasons. Further, experience has shown that there are cases in which military jurisdiction is certain and a particular civilian court's jurisdiction questionable. In addition, the bill ignores fiscal aspects, including pay, line-of-duty status, death gratuities, etc., of servicemen who may be held for long periods of time by civilian authorities. This would present many problems concerning troop utilization, particularly in the case of servicemen

who may have been placed under bond by a civil court or agency. In defense of the present system, which contemplates close cooperation between military and civil authorities, present working arrangements are deemed satisfactory in the view of the military, inasmuch as there has been an absence of complaints to the contrary by civilian authorities. The provisions of the bill which would deny military courts jurisdiction to try servicemen for rape or murder committed in time of peace in the United States are likewise opposed.

In summation, H.R. 3455 would not facilitate the administration of the armed forces military justice programs, nor would it, in any material respect, add to the safeguards presently available to accused persons under the Uniform Code of Military Justice. On the contrary, its enactment would result in greater delays in the disposition of disciplinary matters, further derogation of commanders' disciplinary powers, and, it is believed, would result in a system of justice which would be unwieldy in time of peace and unworkable in time of war or national emergency.

Since the enactment of this legislation would call for an increase in the number of law officers assigned to the various military departments, there would be an increase in budgetary requirements. However, it is not possible at this time to estimate the increase in cost with accuracy.

On 11 December 1958, this Department, on behalf of the Department of Defense, submitted a legislative proposal and draft bill to the Congress, providing omnibus amendments to the Uniform Code of Military Justice. You will recall, of course, that you introduced the Department of Defense bill and that the resulting bill, H. R. 3387, has been referred to your Committee. H. R. 3387 is the product of several years of study by the Department of Defense, by the Treasury Department on behalf of the Coast Guard, and by the Court of Military Appeals. It provides for more prompt and more efficient administration of justice, both from the standpoint of the individual and the Government and, therefore, this Department urges its enactment.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

/s/ James H. Douglas

Honorable Carl Vinson
Chairman, Committee on Armed
Services
House of Representatives

ANNEX D.

A comparative table of the proposed amendments to the Uniform Code of Military Justice contained in the Omnibus Bill and the American Legion Bill with the present articles of the Code.

COMPARATIVE TABLE OF PRESENT ARTICLES OF UCMJ, OMNIBUS AMENDMENTS, AND AMERICAN LEGION AMENDMENTS

<p><u>Uniform Code of Military Justice</u></p>	<p><u>Omnibus Amendments</u></p>	<p><u>American Legion Amendments</u></p>
<p><u>§801. Article 1. Definitions.</u> In this chapter: * * * (10) "Law Officer" means an official of a general court-martial detailed in accordance with section 826 of this title (article 26).</p>	<p>Add: (13) "Convening Authority" means the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.</p>	<p>(10) "Law Officer" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).</p>
<p><u>§806. Art. 6. Judge Advocates and Legal Officers.</u> (a) The assignment for duty of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. Judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard, except when serving on a board of review, shall be rated for fitness, efficiency, and performance of duty only by the Judge Advocate General of the armed force of which they are members.* * * *</p>	<p>NO CHANGE</p>	<p><u>§806. Art. 6. Judge Advocates and Legal Officers.</u> (a) The assignment for duty of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. Judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard, except when serving on a board of review, shall be rated for fitness, efficiency, and performance of duty only by the Judge Advocate General of the armed force of which they are members.* * * *</p>

§312. Art. 12. Confinement with Enemy Prisoners Prohibited. No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

§312. Art. 12. Confinement with Enemy Prisoners Prohibited. No member of the armed forces of the United States may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States, except a member of the armed forces of the United States may be confined in United States confinement facilities with members of the armed forces of friendly foreign nations.

NO CHANGE

§314. Art. 14. Delivery of Offenders to Civil Authorities. (a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

§314. Art. 14. Delivery of Offenders to Civil Authorities. (a) A member of the armed forces accused of an offense against the laws of the United States or of a State or of a Territory or of the District of Columbia shall, except in time of war, be delivered, upon proper request, to the civil authority for trial. No person shall, except in time of war, be tried for any offense committed within the United States punishable by sections 918-932 (Articles 118-132), inclusive, if, prior to arraignment before a court-martial, the civil authority having jurisdiction to try him for a substantially similar offense under the laws of the United States or of a State or of a Territory or of the District of Columbia requests delivery of that person for trial. * * *

NO CHANGE

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

§315. Art. 15. Commanding Officer's Nonjudicial Punishment. (a) Under such regulations as the President may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial--
(1) upon officers of his command--
(A) * * *

§315. Art. 15. Commanding Officer's Nonjudicial Punishment. (a) Under such regulations as the President may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial--
(1) upon officers of his command--
(A) * * *

NO CHANGE

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of not more than one-half of one month's pay; and
(2) upon other military personnel of his command-- * * * *
(E) if imposed upon a person attached to or embarked in a vessel, confinement for more than seven consecutive days; or
(F) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days.

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of not more than one-half of his pay per month for a period of not more than two months; and
(2) upon other military personnel of his command-- * * * *
(E) if imposed upon a person attached to or embarked in a vessel, confinement for not more than seven consecutive days;
(F) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;
(G) if imposed by an officer in a grade above captain or lieutenant, forfeiture of not more than one-half of one month's pay; or
(H) if imposed by an officer in a grade above captain or lieutenant, confinement for not more than seven consecutive days.

NO CHANGE

§816. Art. 16. Courts-Martial Classified. The three kinds of courts-martial in each of the armed forces are--
(1) general courts-martial, consisting of a law officer and not less than five members;
(2) special courts-martial, consisting of not less than three members; and
(3) summary courts-martial, consisting of one commissioned officer.

§816. Art. 16. Courts-Martial Classified. The three kinds of courts-martial in each of the armed forces are--
(1) general courts-martial, consisting of a law officer and not less than five members;
(2) special courts-martial consisting of not less than three members or only of a law officer who is certified to be qualified for duty as a single-officer special court-martial by the Judge Advocate General of the armed force of which he is a member if, before the court is convened, the accused, knowing the identity of the law officer, and upon advice of counsel, requests in writing a court composed only of a law officer and the convening authority has consented thereto; and
(3) summary courts-martial, consisting of one commissioned officer.

§816. Art. 16. Courts-Martial Classified. The three kinds of courts-martial in each of the armed forces are--
(1) general courts-martial, consisting of a law officer and not less than five members;
(2) special courts-martial, consisting of a law officer and not less than three members; and
(3) summary courts-martial, consisting of one commissioned officer.
(Note. See American Legion amendment to Sec. 825 (Art. 25), infra, concerning legal qualifications of a summary court-martial.)

§819. Art. 19. Jurisdiction of Special Courts-martial. Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, discharge, dismissal, confinement for more than six months, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than six months. (Note. Word "dishonorable" and last sentence deleted.)

NO CHANGE

§822. Art. 22. Who may convene general courts-martial. * * * *
 (b) If any person described in subsection (a) (the convening authority), except the President of the United States, is an accuser, the court must be convened by a competent authority not subordinate in command or grade to the accuser, and may in any case be convened by a superior competent authority.

§822. Art. 22. Who may convene general courts-martial. * * * *
 (b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

§823. Art. 23. Who may convene special courts-martial. * * * *
 (b) If any person described in subsection (a) (the convening authority), except the President of the United States, is an accuser, the court must be convened by a competent authority not subordinate in command or grade to the accuser, and may in any case be convened by a superior competent authority.

§823. Art. 23. Who may convene special courts-martial. * * * *
 (b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

NO CHANGE

NO CHANGE

8824. Art. 24. Who may convene summary courts-martial. * * * *
(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

NO CHANGE

8824. Art. 24. Who may convene summary courts-martial. * * * *

(b) When only one commissioned officer is present with a command or detachment, summary courts-martial shall be convened by superior competent authority. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

8825. Art. 25. Who may serve on courts-martial. (a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.
(d) * * * *

8825. Art. 25. Who may serve on courts-martial. (a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial. However, to be eligible for appointment as a single-officer special court-martial, the officer must have the qualifications specified for a law officer in section 826(a) of this title (article 26(a)) and must be certified to be qualified for duty as a single officer special court-martial by the Judge Advocate General of the armed force of which he is a member.

8825. Art. 25. Who may serve on courts-martial. (a) Any commissioned officer on active duty is eligible to serve on general and special courts-martial for the trial of any person who may lawfully be brought before such courts for trial.
(d) * * * *

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified * * *. No member of an armed force is eligible to serve as a member of a court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.
(e) The authority convening a summary court-martial shall detail as summary court-martial a commissioned officer qualified to be detailed as the law officer of a general court-martial as provided in section 826 of this title (article 26).

8826. Art. 26. Law officer of a general court-martial. (a) The authority convening a general court-martial shall detail as law officer thereof a commissioned officer who is a member of the bar of a Federal court or of the highest court of a State and who is certified to be qualified for such duty by the Judge Advocate

NO CHANGE

8826. Art. 26. Law officer of a general court-martial. (a) The authority convening a general or special court-martial shall detail as law officer thereof a commissioned officer who is a member of the bar of a Federal court or of the highest court of a State and who is certified * * *.

General of the armed force of which he is a member. No person is eligible to act as law officer in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer may not consult with the members of the court, other than on the form of the findings as provided in section 839 of this title (article 39), except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

8327. Art. 27. Detail of trial counsel and defense counsel. (a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate.

8329. Art. 29. Absent and additional members.
* * * *

(c) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

8336. Art. 36. President may prescribe rules.
(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other

(b) The law officer may not consult with the members of the court except in the presence of the accused, trial counsel, defense counsel, and the reporter, if any, nor may he vote with the members of the court.

(c) The law officer shall preside over all proceedings of general and special courts-martial except when closed for deliberation or voting by members and shall control direct and regulate the conduct of all proceedings before the court.

NO CHANGE

8327. Art. 27. Detail of trial counsel and defense counsel. (a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. Upon request of the accused, the authority convening a summary court-martial shall detail a defense counsel.

NO CHANGE

8329. Art. 29. Absent and additional members.
* * * *

(c) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the law officer, the accused and counsel.

NO CHANGE

8336. Art. 36. Procedure and Rules of Procedure.
(a) The rules of procedure in cases before courts-martial may be prescribed by the Court of Military Appeals. The rules of procedure in

military tribunals may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable and shall be reported to Congress.

cases before courts-martial shall apply the principles of law and the rules of evidence applicable to the trial of criminal cases in the United States District Court for the District of Columbia, except as such principles and rules are contrary to or inconsistent with this chapter. No rule or regulation applicable to courts-martial shall define, interpret, or set forth the elements of any offense under this chapter except an offense not defined in this chapter and arising only in the military service, in which case the Judge Advocates General may jointly prescribe such rule.

(b) No rule or regulation applicable to courts-martial is effective until adopted by formal order of the Court of Military Appeals and approved by the President.

(c) The procedure, including modes of proof, in cases before courts of inquiry, military commissions, and other military tribunals except courts-martial may be prescribed by the President by regulations which shall, insofar as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(d) All rules and regulations applicable to courts-martial, courts of inquiry, military commissions, and other military tribunals shall be uniform insofar as practicable and shall be reported to the Congress.

(e) The provisions of this chapter shall be construed and interpreted in accordance with the rules of statutory construction applied in the Federal courts. Except where contrary to or inconsistent with the provisions of this chapter, all questions of evidence in courts-martial shall be decided in accordance with the rules applied in the trial of criminal cases in the United States district courts.

8837. Art. 37. Unlawfully influencing action of court. No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

8837. Art. 37. Unlawfully influencing action of court. No authority convening a general, special, or summary court-martial, or any other commanding officer, or any officer serving on the staffs thereof, may censure, reprimand, or admonish the court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

8838. Art. 38. Duties of trial counsel and defense counsel. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings. (b) The accused has the right to be represented in his defense before a general or special court-martial by military counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under section 827 of this title (article 27). Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court. (c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of

Adds to Title 18, United States Code: §1509. Influencing military tribunal or member, law officer, or counsel thereof. Whoever censure, reprimands, admonishes or endeavors to coerce or improperly influence, directly or indirectly, any court-martial, court of inquiry, military commission, or any other military tribunal or board or reviewing authority, or any member, law officer, or counsel thereof with respect to the due and proper performance of its or his official duties or functions shall be fined not more than \$5000 or imprisoned for not more than five years, or both.

8838. Art. 38. Duties of trial counsel and defense counsel. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the law officer, prepare the record of the proceedings. (b) The accused has the right to be represented in his defense before a court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under section 827 of this title (article 27). Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel;

NO CHANGE

such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

otherwise they shall be excused by the law officer or summary court-martial.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

NO CHANGE

8839. Art. 39. Sessions. When a general or special court-martial deliberates or votes, only the members of the court may be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, and in general court-martial cases, the law officer.

8839. Art. 39. Sessions. When a general or special court-martial deliberates or votes, only the members of the court may be present. All other proceedings, including any consultation of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the law officer.

<p>8840. Art. 40. Continuances. A court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.</p>	<p>NO CHANGE</p>	<p>8840. Art. 40. Continuances. A court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.</p>
<p>8841. Art. 41. Challenges. (a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.</p> <p>(b) Each accused and the trial counsel is entitled to one peremptory challenge, but the law officer and an officer appointed as a single-officer special court-martial may not be challenged except for cause.</p>	<p>8841. Art. 41. Challenges. * * * (b) Each accused and the trial counsel is entitled to one peremptory challenge, but the law officer and an officer appointed as a single-officer special court-martial may not be challenged except for cause.</p>	<p>8841. Art. 41. Challenges. (a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.</p> <p>(b) Each accused and the trial counsel is entitled to one peremptory challenge, but the law officer may not be challenged except for cause.</p>
<p>8851. Art. 51. Voting and rulings. (a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the senior member, who shall forthwith announce the result of the ballot in open court.</p> <p>(b) The law officer of a general or special court-martial shall rule upon all interlocutory questions arising during the proceedings. Any such ruling made by the law officer upon any interlocutory question other than the question of the accused's sanity is final and constitutes the ruling of the court. However, the law officer may change his ruling at any time during the trial except a ruling on a motion for a finding of not guilty that was</p>	<p>8851. Art. 51. Voting and rulings. * * * (b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than the question of accused's sanity is final and constitutes the ruling of the court. However, the law officer may change his ruling at any time during the trial except a ruling on a motion for a finding of not guilty which was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank. * * *</p>	<p>8851. Art. 51. Voting and rulings. (a) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.</p> <p>(b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, is final and constitutes the ruling of the court. However, the law officer may</p>

change his ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court--

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

§852. Art. 52. Number of votes required.

(a) (1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) (1) No person may be sentenced to suffer death, except by the concurrence of all the

(d) Subsections (a), (b), and (c) of this section do not apply to a single-officer special court-martial. An officer who is appointed as a single-officer special court-martial shall determine all questions of law and fact arising during the trial and, if the accused is convicted, adjudge an appropriate sentence.

granted. If any member objects to a ruling of the law officer on the question of the accused's sanity, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general or special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court--* * * * *

NO CHANGE

§852. Art. 52. Number of votes required.

* * * * *
(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

§854. Art. 54. Record of trial. (a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it, and the record shall be authenticated by the signatures of the president and the law officer. If the record cannot be authenticated by either the president or the law officer, by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable for any of those reasons, the record shall be authenticated by two members.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the President may prescribe.

§854. Art. 54. Record of trial. (a) Each court-martial shall make a separate record of the proceedings of the trial of each case brought before it. A record of the proceedings of a trial in which the sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial shall contain a complete verbatim account of the proceedings and testimony before the court, and shall be authenticated in such manner as may be required by regulations which the President may prescribe. All other records of trial shall contain such matter and be authenticated in such manner as may be required by regulations which the President may prescribe.

(b) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated. If a verbatim record of trial by general court-

§854. Art. 54. Record of trial. (a) Each general and special court-martial shall keep a separate record of the proceedings of the trial of each case brought before it, and the record shall be authenticated by the signatures of the senior member and the law officer. If the record cannot be authenticated by either the senior member or the law officer, by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the senior member present at the trial and the law officer are unavailable for any of those reasons, the record shall be authenticated by two members.

(b) Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

§865. Art. 65. Disposition of records after review by the convening authority. (a) When the convening authority has taken final action in a general court-martial case, he shall send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General.

(b) If the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court-martial or directly to the appropriate Judge Advocate General to be reviewed by a board of review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the appropriate Judge Advocate General to be reviewed by a board of review.

(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army or the Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Department of the Treasury, and shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

martial is not required by subsection (a), the accused may buy such a record under regulations which the President may prescribe.

* * * *

§865. Art. 65. Disposition of records after review by the convening authority. (a) When the convening authority has taken final action in a general court-martial case and the sentence approved by him includes a bad-conduct discharge or is more than that which could have been adjudged by a special court-martial, he shall send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General.

(b) If the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court-martial or directly to the appropriate Judge Advocate General. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the appropriate Judge Advocate General.

(c) All other records of trial by court-martial shall be reviewed by a judge advocate or lawyer of the Army or Air Force or a law specialist or lawyer of the Navy, Coast Guard, or Department of the Treasury, and shall be transmitted and disposed of as the Secretary concerned may prescribe by regulations.

§866. Art. 66. Review by board of review. (a) Each Judge Advocate General shall constitute in his office one or more boards of review,

contain the matter and shall be authenticated in the manner required by such regulations as the President may prescribe. * * * *

§865. Art. 65. Disposition of records after review by the convening authority. * * * *

(b) All special and summary court-martial records shall be reviewed by a judge advocate of the Army or the Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Department of the Treasury, and shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

§866. Art. 66. Review by board of review. * * * *

(b) The Judge Advocate General shall refer

§866. Art. 66. Review by board of review.
(a) The Secretary of Defense shall constitute one or more boards of review for the armed

each composed of not less than three commissioned officers or civilians, each of whom must be a member of the bar of a Federal court or of the highest court of a State.

(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer or extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more.

(c) In a case referred to it, the board of review may act only with respect to it, the finding and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the board of review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, or the Court of Military Appeals, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocate General shall prescribe uniform rules of procedure for boards of review and shall meet periodically to formulate policies

to a board of review each record of trial by court-martial in which the approved sentence--
(1) extends to death;

(2) affects a general or flag officer;

(3) extends to the dismissal of a commissioned officer or cadet or midshipman; or

(4) includes a dishonorable or bad-conduct discharge or confinement for one year or more, unless the accused pleaded guilty to each offense of which he was found guilty.
* * * *

(e) The Judge Advocate General may dismiss the charges whenever the board of review has ordered a rehearing and he finds a rehearing impracticable. Otherwise, the Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, or the Court of Military Appeals, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing and the convening authority finds a rehearing impracticable, he may dismiss the charges. * * * *

forces, except that when the Coast Guard is not operating as a service in the Navy, the Secretary of the Treasury shall constitute one or more boards of review for the Coast Guard. Each board of review shall be composed of not less than three commissioned officers or civilians, each of whom must be a member of the bar of a Federal court or of the highest court of a State. A commissioned officer detailed to serve on a board of review shall serve thereon until relieved therefrom by the Secretary who constituted the board of review, and is exempt from the provisions of sections 3031 (c), 3031 (d), 8031 (c) and 8031 (d) of this title. An officer of the Navy or Marine Corps serving on a board of review shall be eligible for promotion without regard to the requirements for sea duty or foreign service. The Secretary, however, may establish boards of review within or without the United States. A commissioned officer serving on a board of review shall be rated for fitness, efficiency, and performance of duty only by the Secretary who constituted the board of review. * * * *

and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by boards of review.

8867. Art. 67. Review by the Court of Military Appeals. * * *

(d) In any case reviewed by it, the Court of Military Appeals may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of review. In a case which the Judge Advocate General orders sent to the Court of Military Appeals, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Military Appeals shall take action only with respect to matters of law. * * *

(f) After it has acted on a case, the Court of Military Appeals may direct the Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges. * * *

8869. Art. 69. Review in the office of the Judge Advocate General. Every record of trial by general court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by section 866 of this title (article 66), shall be examined in the office of the Judge Advocate General. If any part of the findings or sentence

8867. Art. 67. Review by the Court of Military Appeals. * * *

(f) After it has acted on a case, the Court of Military Appeals may direct the Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the court. The Judge Advocate General may dismiss the charges whenever the Court of Military Appeals has ordered a rehearing and he finds a rehearing impracticable. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges. * * *

8869. Art. 69. Review in the office of the Judge Advocate General. Every record of trial by court-martial forwarded to the Judge Advocate General under section 865 of this title (article 65), the appellate review of which is not otherwise provided for by section 865 or 866 of this title (article 65 or 66), shall be examined in

8867. Art. 67. Review by the Court of Military Appeals. * * *

(d) In any case reviewed by it, the Court of Military Appeals may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of review. In a case which the Judge Advocate General orders sent to the Court of Military Appeals, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Military Appeals may affirm only such findings of guilty as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. * * *

8869. Art. 69. Review in the office of the Judge Advocate General.

NO CHANGE

is found unsupported in law, or if the Judge Advocate General so directs, the record shall be reviewed by a board of review in accordance with section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867 (b) (2) of this title (article 67 (b) (2)).

the office of the Judge Advocate General. If any part of the findings or sentence is found unsupported in law, the Judge Advocate General shall either refer the record to a board of review for review under section 866 of this title (article 66) or take such action in the case as a board of review may under section 866 (c) and (d) of this title (article 66 (c) and (d)). If the record is reviewed by a board of review, there will be no further review by the Court of Military Appeals except under section 867 (b) (2) of this title (article 67 (b) (2)).

887L. Art. 7L. Execution of sentence; suspension of sentence. (a) No court-martial sentence extending to death or involving a general or flag officer may be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence.

887L. Art. 7L. Execution of sentence; suspension of sentence. (a) No court-martial sentence extending to death or involving a general or flag officer may be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence. No accused may accrue pay or allowances after the convening authority approves a sentence of death, unless that sentence is set aside or disapproved and a sentence of death is not adjudged by another court after a rehearing or new trial.

(b) That portion of a sentence extending to the dismissal of a commissioned officer or a cadet or midshipman may not be executed until approved by the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(b) No sentence extending to the dismissal of a commissioned officer (other than a general or flag officer), cadet, or midshipman may be executed until approved by the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency, he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

NO CHANGE

(c) No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a board of review and, in cases reviewed by it, the Court of Military Appeals.

(d) All other court-martial sentences, unless suspended, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.

§873. Art. 73. Petition for a new trial. At any time within one year after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, the accused may petition the Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court. If the accused's case is pending before the board of review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the board or court, as the case may be, for action. Otherwise the Judge Advocate General shall act upon the petition.

required to serve for the duration of the war or emergency and six months thereafter.

(c) That portion of a sentence extending to dishonorable or bad-conduct discharge may not be executed until approved by the Judge Advocate General or affirmed by a board of review, as the case may be, and, in cases reviewed by it, affirmed by the Court of Military Appeals.

(d) All other court-martial sentences and portions of sentences, unless suspended, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.

§873. Art. 73. Petition for a new trial. At any time within two years after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, the accused may petition the Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court. If the accused's case is pending before the board of review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the board or court, as the case may be, for action. The board of review or the Court of Military Appeals, as the case may be, shall determine whether a new trial, in whole or in part, should be granted or shall take appropriate action under section 866 or 867 of this title (article 66 or 67), respectively. Otherwise, the Judge Advocate General may grant a new trial in whole or in part or may vacate or modify the findings and sentence in whole or in part.

NO CHANGE

<p>NO CHANGE</p> <p>8876. Art. 76. Finality of proceedings, findings, and sentences. The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74), and the authority of the President.</p>	<p>NO CHANGE</p> <p>8895. Art. 95. Resistance, breach of arrest, and escape. Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.</p>	<p>NO CHANGE</p> <p>8876. Art. 76. Finality of proceedings, findings, and sentences. The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73), to action by a separation review board as provided in section 1168 of this title, and to action by the Secretary concerned as provided in section 874 of this title (article 74), and the authority of the President.</p>
<p>NO CHANGE</p> <p>8895. Art. 95. Resistance, breach of arrest, and escape. Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.</p> <p>8898. Art. 98. Noncompliance with procedural rules. Any person subject to this chapter who--</p> <p>(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or</p> <p>(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;</p> <p>shall be punished as a court-martial may direct.</p>	<p>NO CHANGE</p> <p>8895. Art. 95. Resistance, breach of arrest, and escape. Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.</p>	<p>NO CHANGE</p> <p>8898. Art. 98. Noncompliance with procedural rules. Any person subject to this chapter who--</p> <p>(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter;</p> <p>(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused; or</p> <p>(3) refuses or willfully neglects to enforce or comply with the provisions of section 874 (a) of this title;</p> <p>shall be punished as a court-martial may direct.</p>

NO CHANGE

§918. Art. 118. Murder. Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he--
(1) has a premeditated design to kill;
(2) intends to kill or inflict great bodily harm;
(3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or
(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;
is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

§918. Art. 118. Murder. Any person subject to this chapter, who without justification or excuse, unlawfully kills a human being, when he--
(1) has a premeditated design to kill;
(2) intends to kill or inflict great bodily harm;
(3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or
(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;
is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct. No person shall be tried by court-martial for murder committed in the United States in time of peace.

NO CHANGE

§920. Art. 120. Rape and carnal knowledge. (a) Any person subject to this chapter who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.
(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.
(c) Penetration, however slight, is sufficient to complete either of these offenses.

§920. Art. 120. Rape and carnal knowledge. (a) Any person subject to this chapter who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct. No person shall be tried by court-martial for rape committed in the United States in time of peace. * * * *

NO CHANGE

§936. Art. 136. Authority to administer oaths and to act as notary. * * *
(b) The following persons on active duty may administer oaths necessary in the performance of their duties:

§936. Art. 136. Authority to administer oaths and to act as notary. * * *
(b) The following persons on active duty may administer oaths necessary in the performance of their duties:

(1) The president, law officer, trial
counsel, and assistant trial counsel for
all general and special courts-martial. * * * *

(1) The law officer, trial counsel, and
assistant trial counsel for all general and
special courts-martial. * * * *

ANALYSIS OF THE NONJUDICIAL PUNISHMENT
SYSTEM IN THE UNITED STATES ARMY

1. Function of Nonjudicial Punishment. To provide commanders with a prompt and efficient method of disposing of minor offenses and infractions of discipline which occur within their command requiring some punishment but which are not sufficiently serious to warrant trial by court-martial. Article 15, Uniform Code of Military Justice (10 USC 815), authorizes commanders to impose limited forms of disciplinary punishments directly upon members of their command without the intervention of courts-martial. The Manual for Courts-Martial, United States, 1951, urges commanding officers to resort to their power under Article 15 in every case in which punishment is deemed necessary and that article applies, unless it is clear that punishment under that article would not meet the ends of justice and discipline. The Manual admonishes superior commanders to restrain any tendency of subordinate commanders to resort unnecessarily to court-martial jurisdiction for the punishment of offenders.

2. Authority to Impose Nonjudicial Punishment. "Any commanding officer" may impose nonjudicial punishment upon personnel of his command pursuant to Article 15. Article 1(5) of the Code limits the term "commanding officer" to include only commissioned officers and although warrant officers may be assigned to command such units as Army bands they may not impose nonjudicial punishment since in the Army warrant officers are not commissioned. In the Army Article 15 may be exercised by commanding officers only--not by officers in charge.

3. Persons Subject to Nonjudicial Punishment. Officers, warrant officers, and other military personnel are subject to nonjudicial punishment imposed by their commander. Civilians are not amenable to nonjudicial punishment.

4. Offenses Punishable Under Article 15. Only in the case of "minor" offenses is the imposition of nonjudicial punishment authorized by Article 15. The yardstick prescribed by the Manual for determining a "minor" offense characterizes the term to include misconduct not involving moral turpitude or any greater degree of criminality than is involved in the average offense tried by summary court-martial. Beyond this broad outline the determination of whether an offense may be considered minor depends on the nature of the offense, the time and place of its commission, the person committing the offense and all the relevant circumstances.

5. Punishments Authorized Under Article 15. Generally there are three categories of nonjudicial punishments:

a. Those which apply equally to all military personnel. These include admonitions, reprimands, withholding of privileges, and restrictions to limits of specified areas. The duration of any withholding of privileges or restriction is limited to two consecutive weeks.

b. Those which apply only to officers and warrant officers. This category includes forfeiture of not to exceed one-half of one month's pay and may be imposed only by an officer exercising general court-martial jurisdiction.

c. Those which apply to enlisted personnel. These include extra duties, not to exceed two hours a day for a period not in excess of two weeks, and reduction to the next inferior grade. Commanders above the grade of captain may impose a one-pay-grade reduction under Article 15 of the Code (MCM, 1951, par. 131b(2)(c)) for misconduct if the pay grade from which reduced is within the appointing authority of the commanding officer imposing the punishment or any Army commander subordinate to him. A noncommissioned officer may not be reduced to a specialist grade under Article 15. Commanders below the grade of major may impose a one-pay-grade reduction under Article 15 of the Code (MCM, 1951), for misconduct upon privates first class and privates, E-2. (Par. 27b, Army Regulations 624-200, 19 May 1958.) When imposed upon a person attached or embarked in a vessel, confinement not to exceed seven consecutive days or confinement on bread and water or diminished rations for a period not to exceed three consecutive days is authorized. A commander is limited to imposing only one additional punishment in addition to or in lieu of admonition or reprimand.

6. Procedure.

a. The commander must initially satisfy himself by such investigation as he deems necessary that an offense punishable by him under Article 15 has been committed by a member of his command and that an appropriate punishment may be imposed thereunder. No formal investigation is required and commanders often utilize reports of investigations by military police.

b. The commander then notifies the offender of the nature of the offense in clear and concise terms and informs him that he proposes to impose punishment under Article 15 as to the offense unless trial by court-martial is demanded. The notification and information will be by written communication through channels in the case of an officer or warrant officer and may be by written communication in any case. Normally notification to noncommissioned officers is made in writing. In any type of notification to the offender, he must be advised of the following:

(1) The nature of the offense involved.

(2) That he has the right to demand trial by court-martial. The Manual for Courts-Martial, United States, 1951, provides that no disciplinary punishment under the provisions of Article 15 may be imposed upon any member of the Army for an offense punishable thereunder if the accused has, prior to the imposition of such punishment, demanded trial by court-martial in lieu of such disciplinary punishment. An election to accept disciplinary punishment constitutes a waiver of the right to demand trial. A demand for trial does not require preferring, transmitting, or forwarding of charges, but punishment may not be imposed under Article 15 while the demand is in effect.

(3) That he has the right to submit such matters as he desires in defense, mitigation or extenuation.

c. If the accused elects to accept Article 15 punishment, he is given a reasonable time to present any matters in defense, mitigation, or extenuation. If notification is in writing, then acceptance or demand for court-martial will likewise be in writing. (Sample forms of correspondence are contained in Appendix 3b, MCM, 1951.)

d. If the accused does not demand trial by court-martial, the commander then considers any matters presented in defense and determines if punishment is warranted. If he determines that punishment is warranted he will consider the matter presented in extenuation or mitigation in determining the type and quantum of punishment. He will inform the offender of the punishment imposed either orally or in writing, as appropriate, and will also advise him of his right to appeal in accordance with paragraph 134, Manual for Courts-Martial, United States, 1951, to the next superior commander.

e. The accused then acknowledges receipt of the notification of the imposition of punishment and indicates his intention concerning any appeal. He has a reasonable time in which to make an appeal.

f. If he chooses to appeal he will submit by indorsement or by letter a brief signed statement of the reasons for regarding the punishment as unjust or disproportionate. The immediate commanding officer of the accused will, when necessary, include with the appeal a copy of the record of the case. Appeals are expeditiously handled and decided but the person punished may in the meantime be required to undergo the punishment adjudged (Article 15d). Normally the superior will hear no witnesses and when justice so requires he will modify the punishment or set it aside but cannot increase it or change the kind of punishment.

g. The appellant will be informed of the decision on appeal and directed to return the papers to his commanding officer. The commanding officer of the accused is charged with the execution of punishment imposed pursuant to Article 15. The officer who imposed the punishment, his successor in command, and superior authority have power to suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected (Article 15d, UCMJ).

7. Records of Nonjudicial Punishment. In the case of an officer the record of nonjudicial punishment is forwarded to The Adjutant General, Department of the Army, for file in the officer's personnel file where it becomes a permanent record. (Paragraph 5, AR 640-98, 14 November 1955.) In the case of a soldier, a record of all punishments administered under Article 15 is kept in the Unit Punishment Book. (A sample form is contained in Appendix 3a, MCM, 1951.) Where punishment is accomplished by written communications and indorsements, these writings constitute the record. All reductions of enlisted personnel are announced in orders of the headquarters of the reduction authority. (Paragraph 31,

AR 624-200, 19 May 1958.) Required entries are then made in the accused's service record and copies of the order placed in his personnel file. Likewise, action on appeal restoring all rights, privileges, and property, including pay and allowances, of which a reduced member was deprived by the reduction will be announced in the orders revoking the reduction orders. (Paragraph 34, AR 624-200, 19 May 1958.)

REFERENCES

Uniform Code of Military Justice

Art. 15 (10 U.S.C. 815) Commanding officer's nonjudicial punishment

Manual for Courts-Martial, 1951 (Executive Order 10214, February 8, 1951)

Chapter XXVI -- Nonjudicial Punishment

Appendix 3 -- PUNISHMENT UNDER ARTICLE 15 - NONJUDICIAL PUNISHMENT FORMS

Army Regulations

AR 624-200 - APPOINTMENT AND REDUCTION OF ENLISTED PERSONNEL, 19 May 1958 (as changed by Changes 1, 19 March 1959, and 2, 13 April 1959)

AR 640-98 - Personnel Records, 14 November 1955 (as changed by Change 2, 11 May 1956)

ANNEX F

ANALYSIS OF THE SUMMARY COURT-MARTIAL
SYSTEM IN THE UNITED STATES ARMY

1. Function of a Summary Court-Martial. The function of a summary court-martial is to exercise justice promptly, under a simple form of procedure, for relatively minor offenses not disposed of under Article 15. The summary court-martial consists of one commissioned officer who represents both the Government and the accused.

2. Jurisdiction of a Summary Court-Martial. A summary court-martial has jurisdiction over all noncapital offenses made punishable by the Uniform Code of Military Justice and jurisdiction to try all persons subject to the Code except officers, cadets, aviation cadets and midshipmen. No person with respect to whom summary courts-martial have jurisdiction shall be brought to trial before a summary court-martial if he objects thereto unless under the provisions of Article 15 he has been permitted and has elected to refuse punishment under such article.

3. Punishment Which May Be Adjudged by a Summary Court-Martial. A summary court-martial may not adjudge a sentence in excess of the following:

- a. Confinement for one month; or
- b. Hard labor without confinement for 45 days; or
- c. Restriction to specified limits for two months; and
- d. Forfeiture of two-thirds of one month's pay; and
- e. Reduction to the lowest enlisted pay grade. (In the case of specialists above pay grade E-4 and corporals, summary courts-martial may not adjudge confinement or hard labor without confinement or reduction except to the next inferior pay grade. These restrictions are in addition to those imposed in paragraph 16b and 126c(2), Manual for Courts-Martial, United States, 1951. (Paragraph 6, Army Regulations 600-201, 20 June 1956, as changed by Change 1, dated 15 March 1957).)

4. Who May Convene a Summary Court-Martial. A summary court-martial may be convened by any Army commander who may convene a general or special court-martial, the commander of a detached company or other detachment of the Army or the commanding officer of any other command when empowered by the Secretary of the Army. When but one officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when deemed desirable by him.

5. Procedures.

a. The unit commander. On receipt of charges indicating the commission of an offense by a member of his command for which the commander determines that punishment under Article 15 is not appropriate or has in a proper case been refused by the accused, the commander will forward the charges to the commanding officer who exercises summary court-martial jurisdiction over the accused with his recommendation as to appropriate disposition.

b. The convening authority. If the officer exercising summary court-martial jurisdiction over the accused considers that an appropriate punishment can be imposed in trial by summary court-martial he may refer the charges directly to a summary court-martial for trial.

c. The summary court-martial.

(1) Prior to trial. Upon receipt of charges the summary court-martial takes immediate action to bring the accused to trial. He first determines that a summary court-martial is authorized to try the person and the offense. He carefully studies the charge sheet, allied papers, and the elements of the offense charged, and becomes familiar with the rules of evidence. Thereafter he sets the time and place for trial and notifies the accused and all witnesses to be present.

(2) Interview with accused immediately prior to trial. He tells the accused who he is and advises him of the general nature of the charges, the fact that they have been referred to a summary court-martial for trial, the name of the officer who appointed the court and the name of the accuser. He explains his position as combination trial counsel, defense counsel, and court and informs the accused that he will advise and assist him in every way possible. He fully explains the procedure to be followed and that he will call witnesses desired by the accused and will assist in questioning them. The accused will be advised of his own rights as a witness and the maximum punishment that may be imposed. If from page 4 of the charge sheet it does not appear that accused has been permitted and elected to refuse punishment under Article 15 for all the offenses charged, he is advised of his right to object to trial by summary court-martial and is asked whether he consents or objects to such trial. His response is recorded in the space provided on page 4 of the charge sheet and if he objects to trial the charges and allied papers are returned to the convening authority.

(3) During trial. The summary court-martial reads or shows the charges and specifications to the accused and assures himself that the accused understands them. The accused is then asked how he pleads to each specification and charge. If the accused pleads guilty to any specification or charge the meaning and effect of the plea is fully explained to him including the maximum punishment imposable. This explanation is acknowledged by accused's initials in an appropriate block on the charge sheet. If a plea of guilty to all

specifications and charges is allowed to stand the accused may be convicted without calling any witnesses, however, if the summary court-martial feels that the interests of justice will be best served he is admonished to call witnesses and proceed with the trial. The trial is then conducted if there is a plea of not guilty or evidence on the merits is to be received after a plea of guilty. The court reads the names of all witnesses on the charge sheet and determines if the accused desires additional witnesses. The trial proceeds with the court questioning both prosecution and defense witnesses and showing the accused any documentary evidence utilized. The accused is fully advised of his rights to himself cross-examine witnesses and to testify in his own behalf. After conclusion of evidence on the merits the summary court arrives at findings and announces them to the accused. If the accused is found guilty he is read or shown any admissible evidence of previous convictions and the personal data on the charge sheet is verified. After considering any evidence in extenuation or mitigation the court determines a sentence. The sentence is then announced.

(4) After trial. The court notifies the accused's commanding officer of the result of trial and completes the record of trial including the charges considered, pleas, findings, sentence and any prior convictions considered. The charge sheet is corrected to delete the names of any witnesses not called or evidence not used and is made to reflect the names of additional witnesses called or evidence utilized.

d. Post trial procedure. The convening authority in event of conviction takes immediate action to approve or disapprove the sentence after examining the record of trial for defects, making certain that the summary court-martial complied with all legal requirements and that the sentence is not in excess of the legal limits and is appropriate for the offenses under all of the circumstances of the case. His action is then entered on page 4 of the charge sheet. Any subsequent action on the findings or sentence is promulgated in a summary court-martial order (Paragraph 4d, Army Regulations 22-10, dated 19 August 1957, as changed by Change 1, dated 27 March 1958). The record is forwarded to the unit personnel officer who makes an entry on the accused's service record. Copies of the record are then forwarded to the officer exercising general court-martial jurisdiction over the unit for examination by a judge advocate. If the findings and sentence are found correct in law and fact the case becomes final within the meaning of Article 76 of the Code. (Army Regulations 22-145, 13 February 1957.)

6. Record of Trial. The record of trial of a summary court-martial consists of four pages and includes biographical data pertaining to the accused, the names of the witnesses, the charges and specifications, the signature of the accuser, the oath taken by the accuser, the indorsement referring the case to a summary court, a statement as to whether or not the accused was offered Article 15 punishment for the offenses charged, a statement as to whether the accused consents or objects to trial by summary court-martial, the pleas, findings and sentence at the trial, the action of the convening authority and an entry by the unit personnel officer indicating that the conviction has been entered on the personnel records of the accused.

REFERENCES

Uniform Code of Military Justice

- Art. 16 (10 U.S.C. 816) Courts-martial classified
- Art. 17 (10 U.S.C. 817) Jurisdiction of courts-martial in general
- Art. 20 (10 U.S.C. 820) Jurisdiction of summary courts-martial
- Art. 24 (10 U.S.C. 824) Who may convene summary courts-martial
- Art. 60 (10 U.S.C. 860) Initial action on the record
- Art. 64 (10 U.S.C. 864) Approval by the convening authority
- Art. 65 (10 U.S.C. 865) Disposition of records after review by the convening authority
- Art. 76 (10 U.S.C. 876) Finality of proceedings, findings and sentence

Manual for Courts-Martial, 1951 (Executive Order 10214, February 8, 1951)

- Par. 5c -- Who may convene summary courts-martial
- Par. 16 -- Jurisdiction of summary courts-martial
- Par. 79d -- Procedure of summary courts-martial
- Par. 90e -- Summary court-martial
- App. 11 -- Form for Record of Trial by Summary Court-Martial

Army Regulations

- AR 22-145, 13 February 1957. Reporters and supervisory review of records of summary and special courts-martial.
- AR 600-201, 20 June 1956. Noncommissioned Officers and Specialists.
- SR 22-125-5, 28 February 1949. Establishment of Summary Courts in Towns, Cities, and Recreational Areas.

ANALYSIS OF THE SPECIAL COURTS-MARTIAL
SYSTEM IN THE UNITED STATES ARMY

1. Function of a Special Court-Martial. A special court-martial is the forum primarily used by Army commanders to dispose of charges of relatively serious offenses for which a punitive discharge is not authorized or does not appear to be appropriate under the circumstances. It consists of any number of members, not less than three.
2. Jurisdiction of Special Courts-Martial. Although generally referred to as a court of limited jurisdiction, a special court-martial has jurisdiction over all persons subject to the Uniform Code of Military Justice and over all non-capital offenses made punishable by the Code.
3. Who May Convene Special Courts-Martial. Special courts-martial may be convened by any person who may convene general courts-martial, the commanding officer of an Army district, garrison, fort, camp, station, auxiliary air field, or other place where members of the Army are on duty, the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army, or the commanding officer of any other Army command when empowered by the Secretary of the Army.
4. Punishments Which May Be Adjudged by Special Courts-Martial. Article 19, Uniform Code of Military Justice, provides that special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by the Code except death, dishonorable discharge, dismissal, confinement for more than six months, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than six months. A bad conduct discharge may not be adjudged unless a complete record of the proceedings and testimony before the court has been made. By regulation (Army Regulations 22-145, 13 February 1957) the Secretary of the Army has forbidden the appointment of reporters for summary courts-martial or for special courts-martial unless the convening authority shall have received special authorization in each instance from the Secretary of the Army. Since a verbatim record cannot be made, a special court-martial in the Army may impose any authorized punishment except a bad conduct discharge.
5. Procedures. Initiation and investigation of charges against an accused follow the same procedure regardless of whether the case will be tried by a summary court-martial or special court-martial. The consent of the accused is not required for trial by special court-martial. A trial counsel is appointed to prosecute in the name of the United States. A military counsel with equivalent or greater legal qualifications is appointed to defend the accused. In addition to or in lieu of appointed counsel the accused may be represented by civilian counsel retained by him at no expense to the Government or by requested military counsel if reasonably available. Any person

who has acted as investigating officer, law officer, or court member in any case may not act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case, nor may any person who has acted for the prosecution act later in the same case for the defense. No person who has acted for the defense may act later in the same case for the prosecution.

6. Trial Procedure. Trial procedure before a special court-martial is similar to that before a general court-martial, except that there is no law officer. The president of the court rules on interlocutory questions, subject to objection by other members of the court-martial and instructs the court as to the elements of each offense charged, the presumption of innocence, reasonable doubt and the burden of proof. Concurrence of two-thirds of the members present at the time the vote is taken is required for a finding of guilty and a like number must concur in any sentence adjudged. After a finding of guilty the accused is entitled to present evidence in mitigation or extenuation including the making of an unsworn statement either personally or through counsel. The court then closes and assesses the sentence. The procedure followed is prescribed in Appendix 8a, Manual for Courts-Martial, United States, 1951.

7. Record of Trial. A summarized record of trial is prepared, a copy of which is furnished to the accused. Appendix 10 of the Manual prescribes the form of a record where a verbatim record is not made.

8. Post Trial Procedures. After the record of trial is authenticated the trial counsel delivers it to the convening authority for his action on the findings and sentence. The convening authority has the power to approve or disapprove the findings of guilty, or any part of them, and to approve or disapprove any part or all of the sentence adjudged. Since in the Army a bad conduct discharge may not be adjudged the convening authority may order the sentence executed and forward the record of trial to the officer exercising general court-martial jurisdiction where the record is reviewed by a judge advocate, thereby completing appellate review and finalizing the case within the meaning of Article 76 of the Code. (Army Regulations 22-145, 13 February 1957.) The results of the trial including the action of the convening authority are promulgated in special court-martial orders (Army Regulations 22-10, 19 August 1957, as changed). A form prescribed for special court-martial orders is set forth in Appendix 15, Manual for Courts-Martial, United States, 1951.

REFERENCES

Uniform Code of Military Justice

- Art. 16 (10 U.S.C. 816) Courts-martial classified
- Art. 17 (10 U.S.C. 817) Jurisdiction of courts-martial in general
- Art. 19 (10 U.S.C. 819) Jurisdiction of special courts-martial
- Art. 23 (10 U.S.C. 823) Who may convene special courts-martial
- Art. 27 (10 U.S.C. 827) Detail of trial counsel and defense counsel
- Art. 28 (10 U.S.C. 828) Detail or employment of reporters and interpreters

- Art. 54 (10 U.S.C. 854) Record of trial
- Art. 60 (10 U.S.C. 860) Initial action on the record
- Art. 64 (10 U.S.C. 864) Approval by the convening authority
- Art. 65 (10 U.S.C. 865) Disposition of records after review by the convening authority

- Art. 66 (10 U.S.C. 866) Review by a board of review
- Art. 67 (10 U.S.C. 867) Review by the Court of Military Appeals
- Art. 74 (10 U.S.C. 874) Remission and suspension
- Art. 76 (10 U.S.C. 876) Finality of proceedings, findings, and sentence

Manual for Courts-Martial, United States, 1951.

- Par. 5b -- Who may convene special courts-martial
- Par. 15 -- Jurisdiction of special courts-martial
- Chapt VIII -- Appointment of courts-martial
- Chapt IX -- Personnel of courts-martial
- Chapt X -- General procedural rules
- Chapt XI -- Organization of the court
- Chapt XIII -- Matters related to findings and sentence
- App. 8a -- Guide--Trial Procedure
- App. 10 -- Guide--Guide for preparation of record of trial by special court-martial when a verbatim record is not prepared

- App. 14b -- Forms of Action--Convening Authority--Special courts-martial

- App. 15 -- Forms for court-martial orders

Army Regulations

- AR 22-145, 13 February 1957, Reporters and Supervisory review of records of summary and special courts-martial

- AR 22-10, 19 August 1957, as changed by Change 2, 27 March 1958, Transmittal and Referral of Charges and Publication of Court-Martial Appointing and Promulgating Orders

